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## Current Topics.

### The Law of To-day.

WE HAVE the privilege to publish this week the first part of a full report of a learned and most stimulating lecture delivered on Wednesday last, at King's College, University of London, by The Right Honourable Lord Justice SANKEY. The title of the lecture is "The Principles and Practice of the Law To-day." In it Lord Justice SANKEY gives a general survey of the outstanding developments in English Law during the war and post-war periods. It is well that such periodic surveys should be made, and their result published for study by the legal profession. Those who were present unanimously agreed that the Lord Justice's survey was planned with great care and executed with distinction. His words deserve the widest circulation, and call for the most careful consideration. Lord ATKIN, who occupied the chair, dealt, at the close of the lecture, with the modern tendencies of government departments to acquire judicial functions, and certain dangers involved in those tendencies. He expressed the earnest hope that English Law would never develop a system of administrative law separate from the ordinary law of the land. Indeed, his lordship confidently believed that the present system, supplemented by the more frequent use of assessors, is capable of growth to meet the exacting demands of modern developments in commerce and industry. The University of London deserves to be congratulated for arranging such a stimulating and instructive lecture to be given.

### Judges and Magistrates.

MAGISTRATES ARE being a good deal criticised by the judges for various shortcomings, real or supposed. The reproach that the Criminal Justice Act, 1925, is being misapplied by the summary trial of serious indictable offences has a measure of truth, but a good many factors are at work in the change. Trial by jury at Sessions is a slow and uncertain process beside the expeditious methods of the police court. The police prefer the greater certainty of the police court, and the prisoner desires to get the case over. Moreover, with the present lenient administration of our criminal law, the maximum penalty which can be imposed summarily is, in innumerable instances, as great as the punishment which would actually be inflicted on conviction on indictment, and considerable additional expense is saved. The magistrates have further been chided for the facility with which orders for maintenance can be obtained, and for committals for arrears. The Manchester magistrates, stung by some observations of Mr. Justice SWIFT, have protested, and have expressed their regret that the learned judge should not have enquired further before condemning. It is not easy to say where the merits of the controversy lie, but we have often thought that every judge on appointment might well be required to sit for three months in a police court as a magistrate. There would then be fuller knowledge in high judicial quarters of the difficulties which have to be contended with in the lower tribunals, where cases have to be tried without the assistance of counsel in eliciting the facts or discussing the law, where proofs of evidence are not available, and where a mass of miscellaneous business has to be transacted quickly. Year by year new and onerous duties are piled on the justices; they have a complicated matrimonial jurisdiction, and have a large number of Chancery cases of guardianship and adoption of children to wrestle with; they take first cognizance of every criminal case which comes before the courts, and are overwhelmed with a truly enormous number of minor prosecutions. One court alone tries something like 10,000 motor car summonses per annum, with no more assistance than ordinary policemen can give. The problem of summary jurisdiction is by no means so simple as it appears to judges used to the leisurely pace of the High Court, and their dignified progress on circuit.

### The late Mr. Ratcliffe Cousins.

THE METROPOLITAN stipendiary bench is distinctly the poorer by the lamented death of Mr. JOHN RATCLIFFE COUSINS, who for a number of years had been one of the most kindly and sympathetic of its magistrates. Called to the Bar at the Inner Temple in 1887, Mr. RATCLIFFE COUSINS joined the Western Circuit, where he obtained a moderate practice, but it was in the political sphere that he found for some time his chief interest. An indefatigable organiser, and a fluent and persuasive speaker, he did valiant service for his party on the subject of tariff reform, and in local politics he also took an active part, representing Dulwich, where he had long resided, on the London County Council for several years. In 1917, he was appointed stipendiary magistrate for the borough of West Ham, exchanging that post for the higher one of a metropolitan police magistrate in 1922. Thus he was one of the many metropolitan police magistrates who graduated, if one may use that expression, in a stipendiaryship outside the metropolitan area, among others who have done the like being Mr. T. W. FRY, Mr. JOSEPH SHARPE (who succeeded Mr. RATCLIFFE COUSINS at West Ham), Mr. HAY

HALKETT, and Mr. TASSELL. The work that falls to the lot of a metropolitan police magistrate is curiously diversified and calls for a wide knowledge not merely of law and legal procedure, but of human nature with its many foibles and ailings, and also for a sympathetic attitude, particularly to the young. For a task demanding the possession of such qualifications, Mr. RATCLIFFE COUSINS was particularly well equipped, and well he discharged his duties, which oftentimes proved trying enough, with skill and sympathy and tact.

### Australian State Governors.

THE QUESTION which a year or two ago was agitating Australian opinion somewhat acutely—namely, the selection and appointment of governors of the various states comprised within the Commonwealth—has again come to the front in the correspondence columns of *The Times*. The question is, who shall be appointed state governors? At the present time the Imperial Government makes the appointment and invariably the choice is made of some citizen of Great Britain. In certain of the Australian states this system is attacked, and the claim is made for confining appointments to prominent citizens of the Commonwealth, possessed, as is contended, with a complete knowledge of local circumstances and local needs. Moreover it has been claimed that Australians are entitled to be rewarded in this way for distinguished local service. One of the states, however—Victoria—took up, when, a year or two ago, the subject was last ventilated, a distinctly hostile attitude to the claims of the sister states, contending that the present system has worked well in the past, is working well now, and that in those circumstances the rule to be applied is "Leave well alone." One of the obvious advantages of the present system is that the governor comes to his work with a completely detached mind, and is thus enabled to tender advice unbiased by purely local considerations. The attitude of the Imperial Government to this matter has always been, and still is, marked by the utmost correctitude, namely, that effect will be given to the claim for state governors appointed locally should there come a unanimous request for such an alteration of the system, but that in the absence of unanimity on the point, the present method of filling the office must remain unaltered. This is the only possible answer which the Imperial Government can make in present circumstances. No doubt with the continued advance of Australia, and the increasing sense of its important place within the British Commonwealth, the day may come when the whole system of appointments may require to be overhauled, but for that the time does not yet seem quite ripe.

### Breaches of Probation.

PART I of the Criminal Justice Act, which did much to facilitate the working of the probation system, contains a particularly useful provision in s. 7 (4), which authorises a court to impose a fine not exceeding ten pounds for a breach of recognisance under the Probation of Offenders Act, without prejudice to the continuance in force of the recognisance. This method of dealing with an offender is in addition to the power already existing of sentencing him for his original offence.

The power to fine has the obvious advantage that it affords the means of giving the probationer a sharp lesson in the consequences of misbehaviour without depriving him of the benefits of supervision. It has another less obvious advantage. In not a few cases the breach is due to ill-judged interference by parents or friends, who, instead of co-operating with the probation officer, frustrate his efforts and directly conduce to the commission of the offence. Now that a breach of recognisance has itself been created a statutory offence punishable by a fine, there seems no reason why any person who aids and abets in its commission should not be dealt with in accordance with s. 5 of the Summary Jurisdiction Act, 1848, and punished in the same way as the principal offender may be punished. This would probably be found an effectual check upon misguided relatives who impair the chances of successful probation.

### Disputing a Will.

AMONG THE wills and bequests, particulars of which are published in the press, was recently one of a wealthy testator who imposed a condition not altogether unfamiliar, but not usually found in the precedent books, as follows: "any beneficiary who shall dispute my will shall be deprived of all interest thereunder," or words to the same effect. One wonders sometimes how these words got there. Evidently they are the testator's own, but it is doubtful whether he understands what effect, if any, they have. No testator wishes his will to be "disputed," that is, for a contest to arise concerning its due execution, or its validity, or that of any gift contained in it, but it should be pointed out to anyone who desires such a clause to be inserted in his will that the last person likely to "dispute" a will is a person who benefits under it, except in the unlikely event of his attempting to set up another will or an intestacy under which he takes even larger benefits. In *Cooke* v. *Turner* (1846), 15 M. & W. 727, the testator's daughter, who was given considerable interests in his real estate, disputed the will on the ground that her father was insane at the time he made it, and refused to do any act to confirm the will. Baron ROLFE held that the proviso was good in law, that the devisee had brought herself both in letter and spirit within it, and therefore she had forfeited all benefit under it. In the Privy Council case of *Evanturel* v. *Evanturel* (1874), L.R. 6 P.C.1, it was held that such a condition was neither void for uncertainty nor contrary to public policy. But it can only be applied to a case where the will is unsuccessfully disputed. It is quite possible, however, that a testator who insists on such a proviso being inserted in his will means something much wider than he says. Very likely he has heard that the Chancery Division is largely occupied with the hearing of summonses taken out by beneficiaries or others to determine questions of doubtful construction arising on wills, and he desires to prevent any costly litigation arising out of his dispositions. If that is what he means and he says so, such a condition is much too general, and is invalid. In *Rhodes* v. *Muswell Hill Land Company* (1861), 29 Beav. 560, a testator directed that if any dispute should arise between the legatees and devisees under his will it should be decided by his trustees, and if any beneficiary should institute any proceedings, either at law or in equity, on any matter relating to his estate and effects, "or in any clause matter or thing contained in the construction thereof," he should forfeit all benefits devised or bequeathed to him. A dispute did arise, brought about by the clause itself, for a would-be purchaser from a devisee suggested that it prevented a good title being made to the property. Lord ROMILLY, M.R., said that he had no doubt that the forfeiture clause had no more effect than if it had been altogether omitted from the will: "The testator says, 'I give you the property, but if you resort to any proceedings whatever respecting it, even to secure its enjoyment, I give it to someone else'; the thing is absurd." Such a provision was inconsistent and repugnant, and constituted no objection to the title. And this decision was followed in *Re Williams; Williams* v. *Williams*, 1912, 1 Ch. 399.

### Continuing Coercion.

IT MUST rarely happen that a married woman charged with a continuing offence, or one indeterminate as to time, pleads that she engaged in a course of conduct under the coercion of her husband. At the last Derbyshire Assizes, a married woman, being treasurer of a Death and Annual Society for Women, was charged with fraudulent conversion by reason of a general deficiency in the club funds. The defendant was

the wife of the licensee of the inn at which the club used to meet, and she had permitted her husband to mix the club subscriptions with the general takings of the house. The innkeeper had been insolvent since the General Strike of 1926, and finally became bankrupt, with the bailiffs in possession. His wife, the defendant, pleaded (1) no intent to defraud; (2) coercion. Mr. Justice Hawke, in summing up, explained to the jury that the onus (1) of proving fraudulent intent was on the prosecution; but (2) of proving coercion was on the defendant. The common law presumption in favour of a wife was abolished by the Criminal Justice Act, 1925, s. 47, which now provides that it shall be a good defence to prove that the offence was committed in the presence of, and under the coercion of, the husband. Counsel for the defence had pointed out that the defendant always spoke of her husband as "the master." Did that mean that his word was law in the house, or was it a complimentary expression to show that married men were still in name head of the house, whatever they were in substance? The jury would understand the local meaning, as he (the learned judge) did not belong to those parts. The defendant was acquitted. It is noteworthy, however, that the section—though it refers to any offence other than treason or murder—appears to contemplate that the defence will only be raised in an offence comprised in an isolated act. It is difficult to see how an offence extending over a period of time can be committed "in the presence of" the husband.

## Liability of Owner of Motor-Car for Hirer's Negligence.

THE BOLD claim was made in a recent case before Mr. Justice TALBOT that a person who hired out a motor-car, to be driven forthwith by the hirer in a public street, was under a legal duty to take reasonable care that the hirer was competent to drive it; and, consequently, that if he were not capable, and damage was caused by reason of his incompetence, the person damaged had a right of action against the person who let the car out on hire. In declining to accept this proposition, the judge is reported to have observed that such a contention was "a novelty and an experiment" which could only succeed before some more exalted tribunal, and probably that tribunal would have to be the Legislature. He also stated that no authority had been cited in support of the proposition. Possibly the nearest authority is *Smith and wife* v. *Bailey*, 1891, 2 Q.B. 403, which, so far as it may be so, is directly adverse. In that case the defendant, the owner of a traction engine, to which his name was affixed by statute, was sued by a person injured through the negligent management of it of one GREENSTREET, who had hired the engine for three months. A jury having found that GREENSTREET was not the servant of the defendant BAILEY, the hirer, and the Court of Appeal refusing to disturb this finding, the issue of the legal liability of BAILEY was considered and judgment given in his favour, the old case of *Stables* v. *Eley*, 1825, 1 C. & P. 614, being thus overruled. *Smith* v. *Bailey*, it may be added, was a stronger case for the plaintiff than that before TALBOT, J., for the defendant's name on his engine might have been construed as holding out his responsibility. The case of *Smith* v. *Tomlinson*, 1850, 16 L.T. o.s., 65, in which the owner of a horse was held not responsible for damage done by it, while in charge of a horse breaker on the public highway, may also be held as one "*a fortiori*." Nevertheless, if the law is clear, the proposition that it should be changed is at least worth consideration. A motor-car is a potentially dangerous thing in unskilful hands, and it might be fair to the public to place some duty of care on the owner that it should be so controlled. This is not to say that he should be an insurer, liable if injury were caused by it in the hands of a thief or a person taking a "joy ride"; but he might be asked to take some reasonable care to whom he handed it. But possibly this is not feasible so long as a driving licence implies no fitness whatever to drive.

## Expulsion of Member of Trade Union.

WHAT WOULD appear to be a principle on which, as far as we are aware, there is no previous direct authority, has been established by Mr. Justice ROMER in *Fish* v. *National Union of General Workers and the National Union of General Municipal Workers*. In that case the plaintiff claimed a declaration that he was still a member of the National Union of General Workers and of the National Union of General Municipal Workers, and he also claimed an injunction to restrain the unions or either of them from expelling or excluding him from membership. One of the rules provided that "should any member of the union when in work owe six months' contributions, and not clear the books, his name should be struck off and he should forfeit all he may have contributed to the union." This event did happen, the plaintiff being more than six months in arrear, and in accordance with the rules he was expelled from the union. The point raised by the plaintiff was that he was still a member inasmuch as no notice of intended expulsion was served on him, and inasmuch as in consequence he was given no opportunity of appearing and explaining the circumstances of the case. It is a general principle in expulsion cases, that before a member can be expelled, notice should duly have been served on him and that he should be given an opportunity of appearing before the committee or other body convened for the purpose, in order to urge anything he may desire in his defence, in opposition to his intended expulsion. There are a long line of authorities which clearly establish the above principles (cf., for example, *Labouchere* v. *Earl of Wharncliffe*, 13 Ch. D. 350; *Wolstenholme* v. *Amalgamated Musicians Union*, 1920, 2 Ch. D. 389; *Burn* v. *National Amalgamated Labourers' Union*, 1920, 2 Ch. D 364), culminating in the recent case of *Wright* v. *Bath Club Ltd.*, *Times*, 16th July, 1926. Further, in order that a purported expulsion should be valid, it is essential that the rules of the union or association prescribing the procedure to be followed, should be followed to the letter, cf., *Young* v. *Ladies' Imperial Club*, 1920, 2 K.B. 523. The case of *Fish* v. *National Union of General Workers, etc.*, appears, however, to establish an important exception to the rules with regard to the giving of notice and an opportunity of appearing and being heard to the member it is proposed to expel, this exception being that where the rule provides that on the happening or non-happening of an event (in this case six months' arrears of contributions) a member shall automatically cease to be a member, this result will automatically follow, on the happening or non-happening of such event, so that in such a case the above principles with regard to giving a member notice of intended expulsion and giving him an opportunity of attending and being heard can have no application. In such cases, however, the rules of the union must notwithstanding be strictly followed.

## *Autrefois Convict.*

AN AMUSING case before the Ongar magistrates, if reported correctly, shows them stronger in common-sense than in law. JOHN DAY, of High Ongar, had been fined on a police prosecution for being in possession of a pheasant, and proceedings were then taken by the county council for killing the pheasant without a licence. The chairman said DAY had already been fined for the same act, but the Excise officer pointed out that it was not legal to kill without a licence, although in this case a catapult was used. The chairman remarked that one cannot take out a licence for a catapult, but was told by the officer prosecuting that that made no difference; it is an offence to kill without a licence. The Bench decided that, as DAY had already been punished, they would not fine him again, and they are reported to have acquitted the accused. The elements of the revenue offence are distinct from that of the poaching, and a plea of *autrefois convict* of the one would not be available as a defence to a charge of the other. But strict law and justice are not always synonymous. The Ongar bench chose justice.

## Wife's Costs in Matrimonial Proceedings.

In the recent case of *Withers, Bensons, Currie, Williams & Co.* v. *Cawston*, 72 Sol. J., p. 191, in which the plaintiffs' solicitors claimed £169 7s. 9d. from the defendant in respect of a bill of costs incurred on behalf of his wife in negotiations which culminated in a deed of separation, counsel for the plaintiffs said that "where a wife reasonably and honestly believes on proper grounds that she has a case against her husband of infidelity or cruelty or something entitling her to a remedy in a divorce court, then she is entitled to consult a solicitor and the costs incurred by her are costs incurred by her as agent for her husband." He further submitted that for him to succeed it would be sufficient if he could show (1) that the client had acted reasonably, (2) that the solicitors had acted in a reasonable and diligent manner. The defendant's case was that the deed of separation ultimately secured was always obtainable, and that all proceedings except those necessary for the deed, were unnecessary and unreasonable; that instructions should have been confined to material essential for the deed. After consultation counsel agreed that the real questions in the case were as follows: (1) Was the wife acting honestly and reasonably; (2) were the proceedings instituted by the plaintiffs reasonably necessary in her interests in the circumstances; and (3) was any unnecessary expense incurred owing to unreasonable conduct on the part of the wife. The third question referred to the activities occasioned by the wife's uncertainty during negotiations whether she should seek a divorce, a judicial separation or, what was eventually obtained, a deed of separation. Counsel for the defendant husband submitted that a wife cannot pledge her husband's credit if the legislation is not likely to succeed or achieve any useful object; and that before divorce proceedings can be instituted the solicitor must have ample grounds for believing that the charges by the wife can be proved. For the plaintiffs the judgment of Lord Justice Brett in *Robertson* v. *Robertson*, 1881, 6 P.D. at p. 125; 25 Sol. J., 741, was referred to: "If the solicitor who appears for the wife either knowingly promotes a case which it must be clear to anybody has no foundation at all, so that he is countenancing improper litigation; or if he takes steps which are merely oppressive or obviously unnecessary; or if he crowds a case with absurd evidence, all those are reasons why, if he so misconduct himself, the costs of the wife should be disallowed either in whole or in part," and counsel submitted that in the absence of the above faults the solicitor is entitled to costs, whether the wife fails or succeeds in her action. The principle on which solicitors can retain their costs in cases of this nature was determined in *Michael Abrahams, Sons & Co.* v. *Buckley*, 1924, 1 K.B. 903; 68 Sol. J. 596, before Mr. Justice McCardie, who, at page 914 (Sol. J., p. 597), laid down the three following rules: (1) It is not necessary for the plaintiffs (solicitors) to prove that the defendant (the husband) was in fact guilty of cruelty or in fact committed adultery; (2) it is not essential . . . to show that the wife had actually procured a decree in her favour; and (3) it is essential . . . for the solicitor to clearly prove that he acted on reasonable grounds, that he made adequate inquiries and that he showed proper diligence and full care. The above rules were amplified, from the wife's point of view, in *Durnford* v. *Baker*, 1924, 2 K.B. 587; 68 Sol. J. 790, when Lord Justice Atkin said, at p. 601: "I do not think that it is sufficient for the solicitor to believe reasonably that the proceedings are well founded. Such a rule would enable a wife to devise a plot against her husband, convince a solicitor with a plausible tale that she had good grounds for proceeding against him, and thereby render her husband liable for her costs of presenting a fraudulent petition. Proceedings reasonably instituted must mean reasonably instituted in view of the knowledge possessed by the wife, and not in view of that possessed by her solicitor." Mr. Justice MacKinnon, in his judgment in the present case, after reviewing the authorities, said that in effect the reasonableness of the proceedings must be judged by the knowledge possessed by both the solicitor and the wife. He found for the plaintiffs on the ground that neither the solicitor nor the wife had acted unreasonably within the three questions (*supra*) submitted by counsel.

In another recent case, *Arnold and Weaver* v. *Amari*, 72 Sol. J., 138; Jan. 21, W.N. 19, the diligence and care of the plaintiff solicitors did not secure them a judgment in their favour. A wife, threatened with divorce proceedings, had retained the plaintiffs as her solicitors. They made full inquiries and satisfied themselves of her innocence, and obtained evidence on her behalf. At the hearing, however, she did not appear, and a decree was pronounced in favour of the husband. The President refused the wife's counsel's application for costs, no security for them having been obtained from the husband, and left the solicitors to their common law remedy. In the subsequent action for these costs before Mr. Justice Sankey, he held that there was no authority which compelled him to hold that the wife was entitled to pledge her husband's credit and bind him to pay her solicitor's costs in those circumstances, and gave judgment in favour of the defendant.

## Intervention by the King's Proctor before Decree *nisi*.

The judgment of the President of the Divorce Division upon a summons for directions by the King's Proctor in the case of *Sloggett* v. *Sloggett*, 72 Sol. J., p. 192, effects an innovation in the accepted practice as to intervention by the King's Proctor.

The participation of the King's Proctor in divorce suits is under three separate heads. On any petition for divorce or nullity the court may send the papers to the King's Proctor for argument by him, subject to the direction of the Attorney-General, of any point directed by the court. The King's Proctor's function here may be said to be that of *amicus curiæ* and his presence rests on the request of the court. Intervention proper by the King's Proctor, that is before decree *nisi*, is under the direction of the Attorney-General, by leave of the court, in pursuance of inquiries by the King's Proctor in the exercise of his office. This function, before the decision in *Sloggett* v. *Sloggett*, was held to be limited to intervention where there was collusion. The third kind of process by the King's Proctor is where, after decree *nisi*, on the direction of the Attorney-General the King's Proctor "shows cause" as one of the public why the decree should not be made absolute. This is by far the most frequent form of "intervention" resorted to and proceeds upon the grounds of the decree having been obtained by collusion, or that material facts, e.g., the adultery of the petitioner, have not been brought to the knowledge of the court.

The decision in *Sloggett's Case* affects solely the second of these processes, and it is now established that the King's Proctor may, by leave of the court, intervene before decree *nisi* and present a case supported by evidence upon any facts which the Attorney-General thinks it expedient to bring to the knowledge of the court.

The reasonableness of the decision is beyond question, and the momentousness of it is only due to the fact that for the last sixty or seventy years the settled practice has been to construe the statutes as limiting intervention by the King's Proctor before decree *nisi* to cases of collusion.

The statutes which have dealt specifically with intervention by the King's Proctor are the Matrimonial Causes Acts, 1860 and 1873, and the Judicature (Consolidation) Act, 1925, ss. 181 and 182.

Section 7 of the statute of 1860 enacted for the first time that every decree for a divorce should in the first instance be a decree *nisi* and indicated the lines upon which the King's Proctor should act, viz., in protecting the interests of the public and guarding the honour of the court, and its provisions have been reproduced in s. 181 of the Judicature Act of 1925. The important words of s. 7 are as follows: " . . . and at any time during the progress of the cause or before the decree is made absolute any person may give information to Her Majesty's Proctor of any matter material to the due decision of the case, who may thereupon take such steps as the Attorney-General may deem necessary or expedient; and if from any such information or otherwise the said Proctor shall suspect that any parties to the suit are or have been acting in collusion for the purpose of obtaining a divorce contrary to the justice of the case, he may under the direction of the Attorney-General and by leave of the court intervene in the suit, alleging such case of collusion, and retain counsel and subpœna witnesses to prove it . . ."

The 1873 Act extended the Queen's Proctor's powers of intervention to suits for nullity of marriage.

In *Hudson* v. *Hudson and Poole*, 1875, 1 P.D. 65, it was held by Sir JAMES HANNEN, P., on s. 7 of the 1860 Act that only in the case of suspected collusion could the Queen's Proctor intervene; in other circumstances his function was limited to watching the case, and subsequently showing cause as one of the public why the decree should not be made absolute in the event of the material facts not having been brought to the knowledge of the court at the hearing. However, in *Jackson* v. *Jackson*, 1910, P. 230, where the facts were similar to those in *Sloggett's Case*, Mr. Justice BARGRAVE DEANE, after consulting Lord MERSEY, expressed the view on the statute that the King's Proctor was enabled "to come in, and if necessary call evidence," but unfortunately effect could not be given to that view owing to the fact that the then Attorney-General, who had to direct intervention, took an opposite view.

Lord MERRIVALE in his judgment stressed the fact that it was necessary to take into account the subject matter and all the provisions which related to it, and referred to s. 178 of the Judicature Act, 1925, which provides that:—

> "On a petition for divorce it shall be the duty of the court to satisfy itself, so far as it reasonably can, both as to the facts alleged and also as to whether the petitioner has been accessory to or has connived at or condoned the adultery or not, and also to inquire into any counter-charge,"

and referred to *Richards* v. *Richards and Cook*, 1869, 21 L.T. N.S. 598, and *Gaskill* v. *Gaskill*, 1921, P. 425, in both of which cases similar action had been taken to that proposed in *Sloggett's Case*, besides the dictum of Mr. Justice BARGRAVE DEANE in *Jackson* v. *Jackson*, as authority for the view that the court was enabled to seek the aid of the King's Proctor in respect of questions of fact as well as that of the Law Officers of the Crown on questions of law at any stage.

It is submitted, however, that the effect of this deposition of the accepted practice will be insignificant in its influence on the life of the community, seeing that it has taken since 1910 for a set of circumstances to arise upon which successive Attorneys-General might have considered action in reliance upon the considered views of Mr. Justice BARGRAVE DEANE and Lord MERSEY.



# A Conveyancer's Diary.

**Leases of Registered Land.**

In the "Diary" on p. 96, *ante*, attention was drawn to the necessity for the registration of the title to a lease or underlease for a term exceeding twenty-one years of registered land, whether or not in a non-compulsory area. It seems that the need for such registration had not been universally realised—a fact which is somewhat surprising—for at least one of the books of precedents draws attention to the requirement in unmistakeable terms; see 3 Prid., 22nd ed., pp. 1044-5, note (*m*).

It is clear that in this respect there has been a change in the law; for instance the greater parts of ss. 18, 19, 21 and 22 of the L.R.A., 1925 are new. Sections 18 (1) (*c*) and 21 (1) (*d*) confer on the registered proprietor of registered land (which expression, as pointed out on p. 96, *ante*, includes, for the purposes of those sections, land outside the compulsory area if the title thereto is registered) a new express power to grant valid leases. Under the old system a lease was a transaction "off the register"; under the new Act, however, not only is the registered proprietor enabled to make a lease, but the title to such leases, if exceeding twenty-one years, must be registered.

It is obvious that the obligation to register any interest capable of registration should be created, for the register, to be really effective, should show at least all interests which may be registered, and in particular it ought to be made impossible for the land, in effect, to be removed from the register without a proper application being made under s. 81. Thus a long lease at a peppercorn rent might be granted and that term subsequently enlarged into a fee simple with the consequence that the register would show one person as the registered proprietor of the fee simple, while in fact the fee simple had in fact become vested in another absolutely.

The point may be emphasised that what has to be registered is the title to leases exceeding twenty-one years (and not merely forty years or upwards) of registered land. Section 123, requiring the title to a lease having forty years and upwards to run to be registered, applies only to unregistered land in areas in which an Order in Council has been made introducing compulsory registration on a sale or grant of a lease. The two provisions must be clearly distinguished.

On the grant of a lease exceeding twenty-one years of registered land, whether in a compulsory or non-compulsory area, applications should be made:—

(*a*) for the registration of notice of the lease under L.R.A., 1925, s. 48. Such notice, when entered, will operate to give notice of the existence of a claim against the registered land, but will not convert the claim into a valid lease: *ib.*, s. 52; see also "Brickdale & Stewart Wallace," p. 215, note (*f*).

(*b*) for registration of the title to the lease or underlease under s. 8. Until a substantive registration under s. 8 is effected no legal term will be created. It is suggested in "Brickdale & Stewart Wallace," on p. 59, that "the effect of not registering the lease when granted" is "that the lessee holds the demised premises, not as legal owner of the term, but as a person who has entered into a binding agreement for a lease." But it is more than doubtful whether the analogy of *Walsh* v. *Lonsdale*, 21 Ch.D. 9, is the correct one. There is no question of obtaining specific performance against the lessor for the lease has been properly granted. Is not the nearest analogy that of a tenant in tail who, before 1926, had barred the entail but had not enrolled the disentailing assurance, the time for that purpose not having expired? In fact the position of the lessee until registration is simply that he has as yet no marketable title, but he can at any time rectify the omission to register.

It is important to bear in mind the fundamental distinction between (*a*) and (*b*), *supra*. Registration pursuant to an application under (*b*) is positive; the lessee thereby becomes

the proprietor of the term; on the other hand registration of a notice under (*a*) is merely negative; it consists of the entry of a note of a claim against the lessor's registered title and serves merely to give notice of such claim.

One or two difficulties seem at first sight to arise as respects the actual registration. In view of L.P.A., 1925, s. 44 (2) (which provides that under a contract to grant a term of years the intended lessee is not entitled to call for the title to the freehold) it may appear difficult to ascertain whether or not the land is "registered land" in cases where there has been no "contracting out" of the provisions of that sub-section. But an intending lessee may ask in his requisitions whether or not the land is registered land and the reply thereto can always be verified by inspection of the general index map at the Land Registry. Indeed, in some counties it is expedient that an intending lessee should inspect that map.

Again, the land certificate must be produced when a disposition is registered: L.R.A., 1925, s. 64 (1); but the Registrar has power to compel its production: *ib.*, sub-s. (2). Hence there is no practical difficulty in that respect.

If the title to a lease is registered a memorial of the lease need not be registered in any local deeds registry in Yorkshire or Middlesex: s. 135.

**Registration of Easements and Rent-charges.**

The enactments applicable to the grant of a lease derived out of registered land are similarly applicable to the grant or reservation of an easement or a rent-charge for a legal estate. Here again the registered proprietor is the person to make title in exercise of the new powers conferred on him and in right of his legal estate: s. 69. There will be no conflicting powers to carry out the transaction "off the register" under Pt. IX of the Act, see s. 106. It follows that, as these interests must be created by a registered disposition, the title to easements or rent-charges must be registered as well as entered against the title of the land out of which they are created.

## Landlord and Tenant Notebook.

**Rent Less than Two-thirds of Rateable Value: Landlord.**

The question as to who is to be regarded as the landlord for the purposes of the provisions as to decontrol in the Rent Acts where premises are let at a rent which is less than two-thirds of the rateable value of the demised premises, was considered by the Court of Appeal in *Brooks & others* v. *Liffen*, 1928, W.N. 60.

In that case the defendant had originally been the assignee of a lease, granted in 1826, for a term of ninety-eight years, expiring on the 24th June, 1924, at a yearly rent of £5, and at all material times the rateable value of the premises was £38 per year, so that the provisions of s. 12 (7) of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, applied. That sub-section provides "where the rent payable in respect of any tenancy of any dwelling-house is less than two-thirds of the rateable value thereof (the) Act shall not apply to that rent or tenancy . . . and (the) Act shall apply in respect of such dwelling-house as if no such tenancy existed or ever had existed." On the expiry of the lease on the 24th June, 1924, a new quarterly tenancy was granted to the defendant, as from 24th June, at £56 per annum. Subsequently, on the 26th November, 1926, the plaintiffs as executors of the landlord, gave the defendant notice to quit, who, however, held over on the expiry of the notice, claiming to be protected by the Rent Restrictions Act.

The real issue in this case, was whether the defendant was to be regarded as the "landlord" for the purposes of s. 2 of the Rent and Mortgage Interest Restrictions Act, 1923, since if he was the landlord, he would have been in possession of the *whole* of the dwelling-house on the 31st July, 1923, with the result therefore that the dwelling-house would have become decontrolled on that date.

The argument on behalf of the plaintiffs in this case appears to us to be a reasonable and not illogical inference from the provisions of the Acts themselves and from some of the decided cases, although, if accepted, it produces a result which could not reasonably have been in the contemplation of Parliament.

Briefly the argument may be analysed as follows:—Section 12 (7) of the Rent Act, 1920, provides that where there is a letting at a rent of less than two-thirds of the rateable value—and such was the position on the 31st July, 1923, when the defendant was in occupation—the question of the application of the Rent Acts to the premises must be considered, as if no such tenancy existed or ever had existed. That being so, the person then in occupation is to be regarded not as a tenant at all, but as a landlord. By reason, therefore, of his being in occupation on the 31st July, 1923, as landlord, owing to the above statutory fiction, the premises are entirely decontrolled, so that any fresh tenancy agreement entered into, *inter alia*, by the "fictitious" landlord, and the real landlord would not be controlled at all by the Rent Acts.

In holding, however, that the premises were, nevertheless controlled, the Court of Appeal appear to have based their judgment on the view they took of the meaning of "landlord" in s. 2 (i) of the Rent & Mortgage Interest Restrictions Act, 1923, namely, that "*Landlord" in that section must refer to the real landlord or owner and not to a person who may, by reason of the fiction contained in s.* 12 (2) *of the Rent Act*, 1920, *be regarded as being the "fictitious" landlord.* But this construction appears in our view, to read a qualification into s. 12 (7) of the Rent Act, 1920, which sub-section is absolute and unqualified in its terms, and does not, it is submitted, leave room for any such qualification. The Court of Appeal, however, have decided otherwise, in *Brooks* v. *Liffen*, and accordingly sub-s. (7) of s. 12 of the Rent Acts, 1920, must be construed in accordance with that decision.

It seems material in this connexion, to consider what would have been the position if the defendant, in that case, had, during the currency of the original term, sub-let the premises and had re-entered into possession subsequently to the 31st July, 1923. According to *Oakley* v. *Wilson*, 44 T.L.R. 521, the premises would clearly have become decontrolled, so that, if the lessee had subsequently sub-let to a third person, the latter could not have claimed the protection of the Acts; and as premises, once they are decontrolled, must be regarded as having become completely decontrolled (i.e., as to the future as well), it must necessarily have followed that the defendant himself could not have claimed the protection of the Acts, as against his own landlord.

We can only add that it does seem curious that such divergent results can be effected in the status of a dwelling-house, by reason of even a single sub-letting by the lessee, where it is followed by a re-entry by him, after the material date, into possession of the premises.

## Our County Court Letter.

### DOCKOWNERS' LIABILITIES.

An analogous subject to the above was considered recently by His Honour Judge Gawan Taylor in *Bowman* v. *Vickers-Armstrong Limited*. The plaintiff claimed £30 for damages to his fishing boat in the following circumstances: Twelve hours after the launch of a vessel by the defendant company the plaintiff had moored his boat for fishing in the Walney Channel at Barrow. At 1.30 a.m. his boat was struck by what he discovered was the cradle, which had previously been fastened to Walney Bridge, 1,050 feet down channel. The timber struck the riding chain, and—after almost pulling the bow

under—clustered round the plaintiff's boat, and squeezed and strained it. It was contended that the defendant company was negligent in only using an inch and a half rope to fasten 30 tons of timber, when a 30-foot tide was running. The defence was that the plaintiff had been guilty of contributory negligence, viz.: (1) Four days previously he had been told there would be a launch, and that his boat should be moved out of the way of floating timber; (2) the Harbour Master's notice stated that all yachts and boats in the vicinity of the slipway should be moved; (3) the plaintiff could have drawn his boat up on the beach. The evidence showed that the plaintiff's boat was about 3,000 feet from where the launch took place; that mooring at that point was permitted on sufferance by the harbour authority; and that the defendant company had employed an independent contractor to collect the timber on the day of the launch. The learned judge decided in favour of the plaintiff on liability, but as the boat was from thirty to forty years old he gave judgment for £15 only.

In *Wickett* v. *Port of London Authority*, 165 L.T.J. 144, the plaintiff was in charge of a lighter which was going through a lock leading from the Victoria Dock to the Thames. He was aware of the defendants' notice on the pierhead of the lock, viz.: "... Lightermen and others availing themselves of the facilities and assistance of the servants of the Authority in bringing their craft into and through the entrances of the docks must do so at their own risk ..." The defendants owned the dock and the lock, for the use of which they charged certain dues. Certain orders and directions were given to the plaintiff which involved the use of a rope. The latter broke while attached to the lighter, and injury was caused to the plaintiff. In his subsequent action for negligence the defendants contended that the plaintiff had accepted their dock master's services, and the use of the rope, on the terms of the notice. The jury found that the plaintiff had no option to refuse the rope, and that the defendants were negligent. Mr. Justice AVORY held, however, (1) that *primâ facie* the notice exempted the defendants from liability; (2) that the plaintiff having no option but to follow the directions was not incompatible with his having utilised the facilities provided on the terms of the notice. Judgment was therefore given for the defendants.

The last decision followed *Forbes, Abbott and Lennard Limited* v. *Great Western Railway Co.*, 44 T.L.R. 97. The plaintiff company's barge had loaded coal in Chelsea Dock, and was being passed through a lock into the Thames under the orders of the defendant company's dock master. The barge was strained through stranding on the lock sill, and the repairs cost £175. At the first trial the jury disagreed, but at the second trial a verdict was given for the plaintiff company. The defendant company then claimed to be exempt from liability under their published notice, viz.: "All barges or vessels while in Chelsea Dock are at the sole risk of owners or persons bringing or causing the same to be brought into the dock." Mr. Justice AVORY held that this was no defence, and gave judgment for the plaintiff company. The Court of Appeal reversed this decision. The Master of the Rolls said that it appeared to him that the words used in the condition were intended to cover negligence, and they were quite apt to do so. Lord (then Lord Justice) ATKIN considered that the word "dock" in the above notice must be construed as including "lock." Lord Justice LAWRENCE concurred that the defendant company had desired to guard against the negligence in question.

### IS A WOMAN A "PERSON"?

We understand that the Supreme Court of Canada will shortly hear a reference by the Federal Government of a stated case to determine whether women can be appointed to the Senate. The case hinges on whether a woman is a "person" within the meaning of s. 24 of the British North America Act, respecting appointments to the Senate, and is the result of a petition by prominent Canadian women.

# Practice Notes.

## PROBATE.

IT is interesting to examine some of the safeguards provided by the practice for the protection of the estate in administration, which are little known and appreciated. Rule 42 of the Probate Rules in respect of non-contentious business requires the filing of special declarations of the personal estate and effects of the deceased by certain persons taking administration in circumstances which might give them peculiarly favourable opportunities of abusing their office.

Rule 42 is as follows:—"When any person takes letters of administration in default of the appearance of persons cited, but not personally served with the citation, and when any person takes letters of administration for the use and benefit of a lunatic or person of unsound mind, unless he be a committee appointed by the Court of Chancery, a declaration of the personal estate and effects of the deceased must be filed in the registry and the sureties to the bond must justify." Personal estate is not a term of art in this context, and the real property of the deceased must be set out in the declaration. A receiver appointed under the Lunacy Acts enjoys the same exemption as a committee. Similar declarations are required where the grant is made on the presumption of the death of the deceased, or in the case of an administrator *pendente lite* and (*vide* r. 36), of a guardian of a minor or an infant.

Again, a person entitled to the benefit of any part of an estate, which is being administered, whether, e.g., a legatee or a creditor, may compel the production of an inventory and account under s. 25 of the Administration of Estates Act, 1925, which is as follows:—

> "The personal representative of a deceased person shall, when lawfully required so to do, exhibit on oath in the court, a true and perfect inventory and account of the real and personal estate of the deceased, and the court shall have power as heretofore to require personal representatives to bring in inventories."

If the order is disobeyed the personal representative may be punished by attachment, and if the inventory and account are not satisfactory, the person interested can apply for an inquiry into the inventory and account exhibited.

A person applying for an inventory and account need not enter a caveat and the applications in the matter are made by summons to a registrar.

## DIVORCE.

WITH reference to the Practice Note in our last issue, we are grateful to a subscriber for communicating an alternative form of Issue which has been accepted in the Registry and are glad to print it below:—

A.B. *v.* C.B.

A.B. - - - - - - - Plaintiff
C.B. - - - - - - - Defendant.

Issue to be tried pursuant to Order dated 19 .

Whereas A.B., the plaintiff, claims that he was not domiciled in England at the date of the institution of this suit, and whereas C.B., the defendant, alleges that he was so domiciled, and whereas it was ordered on the day of that an issue be tried as to the domicil of the said A.B.

Therefore let the same be tried.

### JUDGE ON "SPECULATIVE" ACTIONS.

Judge Moore, at Southwark County Court on Monday, referred to speculative actions by solicitors. There was absolutely nothing wrong, he said, in taking up what was called a "speculative" action for poor persons, but the solicitor had to satisfy himself that his client had reasonable chance of success. For a solicitor to take up an action which he knew must fail, simply in the hope of a settlement by a defendant to avoid expense, was grossly improper.

# LECTURE

GIVEN BY

THE RIGHT HONOURABLE LORD JUSTICE SANKEY, before The University of London, 14th March, 1928

## THE PRINCIPLES AND PRACTICE OF THE LAW TO-DAY.

*Inter arma silent leges.* But this is the tenth year since the Armistice, and it is time to try and estimate the effect of the war upon the principles and practice of the law to-day. It is suggested that the war gave a great impetus to the tendency already in existence to create tribunals of a character different from the ordinary courts of our country, to leave the decision of many important matters to persons without the training and experience of judges, and to substitute in many cases a bureaucracy for a judiciary as we know it.

An attempt will be made to trace how far this tendency has gone, to examine the causes of it, and whether it is likely to go further, and to consider what improvement, if any, can be made in the system.

### WAR TIME TENDENCIES.

In the war, it became necessary to create rapidly from time to time a number of different tribunals, and to frame regulations for their powers and procedure. This was achieved by the now famous statutes, familiarly known as "D.O.R.A.," under which the Regulations for the Defence of the Realm were made. Parliament was working under great pressure, and in many cases left the framing of such regulations to His Majesty in Council, or to a Minister. One of the most famous of those tribunals was the Aliens Advisory Committee, and an attempt was made to surround it with a judicial technique by appointing a High Court judge to preside over it. The number of cases, however, which had to be dealt with ran into thousands, and the rapidity with which they had to be disposed of rendered the restriction of some of the attributes of a court of justice necessary. The person charged could make his defence in writing and, in some instances, in person, but he was denied the assistance of counsel or solicitor at the hearing. Such a system would not have been tolerated in peace, and even in war it provoked the eloquent protest of Lord Shaw in the case of *The King* v. *Halliday*, 1917, A.C. 260. The appellant there had been interned by an order of the Home Secretary, made on the recommendation of the Aliens Advisory Committee, under Regulation 14B of the Defence of the Realm Regulations, 1914, to secure the public safety and defence of the Realm. His only remedy in law was to contend that the Regulation was *ultra vires* on the ground that His Majesty in Council had not power under the Act to make it. Lord Shaw, at p. 291, said in memorable terms: "Under this the Government becomes a Committee of Public Safety. But its powers as such are far more arbitrary than those of the most famous Committee of Public Safety known to history. . . . The analogy is with a practice, more silent, more sinister —with the *lettres de cachet* of Louis Quatorze . . . The use of the Government itself as a Committee of Public Safety has its conveniences, has its advantages. So had the Star Chamber. 'The Star Chamber,' says Maitland (Constitutional History of England, p. 263), 'examined the accused, and making no use of the jury, probably succeeded in punishing many crimes which would otherwise have gone unpunished . . . It was a court of politicians enforcing a policy, not a court of judges administering the law.'"

Subsequently numerous tribunals were set up, some with actual and others with advisory jurisdiction, and orders were made dealing with such diverse subjects as the liability of a citizen for military service, and his right to obtain a season-ticket on the railway. It must not be supposed that they were a blot on our judicial system, although many persons have criticised the procedure of some of them as being contrary to natural justice. After all, we were at war, and *salus rei publicæ suprema lex.*

But with eating grows the appetite, and to show the length to which these Regulations have been carried, two cases may be cited: (1) *Chester* v. *Bateson*, 1920, 1 K.B. 829, in which a department attempted by regulations to prevent a subject from taking proceedings before a court of law to recover possession of his premises. The court was able to hold the regulations invalid, declaring it was incompetent for His Majesty in Council to enact that a man who seeks the protection of the King's Courts should be exposed to fine and imprisonment for having done so. It was indeed an astonishing regulation which compelled the person to get leave of a Minister before he brought an action in the courts. And (2) *Ex parte Art O'Brien*, 1923, 2 K.B. 361, where the Secretary of State attempted by an *ad hoc* Order in Council to legalise, *ex post facto*, Acts which were clearly *ultra vires*. I would here refer to a brilliant pamphlet by Mr. J. H. Morgan, one of His Majesty's Counsel and Professor of Constitutional Law in the University of London, entitled "Remedies against the Crown." It is regrettable that that pamphlet was for private circulation only. I have the Professor's leave to refer to it, and I wish it could be widely read. He says on page 48: "These cases are significant of the encroaching temper of the ever expanding executive. In all these cases the authority invoked is, of course, statutory, and the extent to which the courts can intervene is limited by the Statute itself, but the Government Departments are too much inclined to attribute the same sort of mystical efficacy to acts done in virtue of statutory powers as in early times they were wont to ascribe to acts invoking the prerogative, and to contend that the mere fact of those acts requiring confirmation by Parliament is sufficient to invest them with a kind of sanctity which puts such acts, even when inchoate, beyond the reach of the law."

It would be strange if we had escaped the frying-pan of the prerogative to fall into the fire of a Minister's Regulations. It may be said that such Regulations have received the assent of Parliament, but such assent is often assumed when they have been laid before Parliament for a certain time and no objection has been taken to them.

### PRE-WAR TENDENCIES.

But although this tendency received a great impetus from the war, it was not created by it. As civilisation advances, the processes of science become more complicated, business more specialised, and the ordinary courts more and more lean on expert assistance in trying technical cases. An early example may be seen in the Assessors of the Admiralty Court. In 1888 the Railway and Canal Commission Court was formed by creating a tribunal supposed to consist of a High Court judge and two Commissioners, one of whom "shall be experienced in railway business": s. 3; the judge deciding points of law, but the full Commission determining questions of fact. A similar court had been authorised by s. 45 of the Coal Mines Regulation Act, 1887, under which the Secretary of State may direct an investigation to be held into the causes of a colliery explosion by a competent person, assisted by persons possessing legal or special knowledge as assessors. Again, by the Workmen's Compensation Act, 1897, and its successors, medical referees and medical assessors were set up to deal with cases of injury to workmen. The tendency has

been against a court composed of judge and assessors, yet one sympathises with the difficulties of a modern Chancery judge in trying a chemical patent action, in which he probably has to learn a new language in order to understand the case. But the principle, which started in cases of a technical character where the court required assistance, gradually received an extension.

As the State began to control and regulate the lives and destinies of its members, new situations were created and a new class of case arose where the State itself became a party to the action. I do not refer to revenue or criminal matters but to the questions which began to arise under the administration of the Local Government, and, subsequently, Public Health, Town Planning and Small Holdings Acts. Some of those were of a purely administrative character; in others, the rights of private individuals were concerned. Examples of the latter may be seen in the Factory Act. But there are two lines of development which have to be carefully distinguished. There are cases under the general law and its regulations dealt with in the public courts before the justices, and there are also cases where the modern tendency has been to make the department both judge and prosecutor to the exclusion not only of the right, except in very limited circumstances, to appeal to the public courts, but also to the exclusion of those rights of being heard and of hearing what is said against one, which we had come to regard as the heritage of every Englishman. The most familiar of those cases is that of *Local Government Board* v. *Arlidge*, 1915, A.C. 120. There the owner of a dwelling-house applied to a local authority to determine a closing order which had been made in respect thereof, and, on the refusal of the local authority to do so, appealed to the Local Government Board. A public inquiry was directed to be held by an inspector appointed by the Board, who, after holding it and after a personal inspection of the premises, made certain reports. The Board dismissed the appeal without having disclosed to the appellant the contents of their inspector's report, and without giving him the opportunity of being heard by the Member of the Board who was going to determine the appeal.

The House of Lords held that the appellant was not entitled as of right to be heard orally before the deciding officer, or to see the report made by the Board's inspector upon the public local inquiry. Lord Moulton, on page 150, said: "In the present case, the Legislature has provided an appeal, but it is an appeal to an administrative department of State and not to a judicial body . . . Parliament has wisely laid down certain rules to be observed in the performance of its functions in these matters and those rules must be observed because they are imposed by statute . . . These rules are beyond the criticism of the courts."

The use of the word "wisely" here may be criticised. It is merely the opinion of the learned Law Lord on the policy of Parliament. His interpretation of the statute must be accepted as beyond doubt, but there are many who will not agree with his personal opinion on the legislation, and who think that, if the department is to be the judge in such matters, at least there should be some opportunity of appealing against its decision.

### Post-War Tendencies.

The tendency above referred to, created before the war and receiving a great impetus during it, has, since the armistice, been frequently acted upon by Parliament, in technical and industrial matters, where special courts have been created, and in others where the decision has been left to the minister. For example, the Profiteering Act, 1919, s. 1, sub-s. (2), empowers the Board of Trade to investigate complaints and require a seller to repay an excess; the Gas Regulation Act, 1920, s. 6, where there is an appeal to the Chief Gas Examiner; the Railways Act, 1921, which created a new tribunal, one lawyer and two laymen; the Unemployed Workers' Dependents Act, 1921, where by s. 1, sub-s. (5), the decision of the Minister of Labour is final and not subject to appeal in any court; the Rent and Mortgage Interest Restrictions Act, 1923, where, by ss. 12 and 15, reference committees may be established by the Minister of Health, to whom questions may be referred for report, and, by consent, for determination; the National Health Insurance Medical Benefit (Consolidation Regulations), 1924, where, by ss. 34 and 35, there is an appeal to the Minister; by the Rating and Valuation Act, 1925, where a special panel of referees is set up under s. 24, sub-s. (7); by the Housing Act, 1925, where, by s. 115, there are appeals to a Minister, subject to an appeal to the courts on a point of law; by the Town Planning Act, 1925, where, by s. 7, sub-s. (3), the decision of the Minister is to be final and conclusive; by the Public Health Act, 1925, s. 33, sub-s. (13), where the Minister decides whether consent has been unreasonably withheld; by the Poor Law Act, 1927, where, by s. 155, a person aggrieved, instead of applying for a writ of *certiorari*, may appeal to the Minister. A still more recent case is the example of the Landlord and Tenant Bill (No. 2), s. 20, before the House of Lords, with its suggestion for a panel of part-time referees, who may be judges one day and witnesses the next. These examples might be multiplied. One more curious Act remains to be mentioned, and that is the Mines (Working Facilities and Support) Act of 1923, which provides that in certain matters dealt with thereunder the Railway and Canal Commission has jurisdiction only if the Board of Trade has decided that there is a *primâ facie* case. It is true that some of these Acts are a re-enactment of previous legislation and they do refer in some cases to matters purely administrative; and, again, the changes are not drastic, it is here a little and there a little. In all of them there seems to be a tendency to exclude the jurisdiction of the ordinary courts, and it remains to be considered why it is this tendency exists; whether it is likely to be extended, and, if so, what safeguards shall be provided for the public.

### Causes of the Tendency.

The tendency may be due to one or more of several causes: (1) delay, (2) uncertainty, (3) excessive costs, (4) the complexity of certain cases, and (5) the encroachment of the bureaucracy. It may be conceded that celerity, cheapness and certainty are all desirable in the conduct of litigation, but this concession must be made with certain qualifications. It is not in accordance with public policy to make litigation too cheap, or so quickly disposed of that a man can rush into court and get a decision at a moment when he is temporarily angry or annoyed, and where, if he had time to think, no more would be heard of the quarrel. No doubt it is in the interests of the State that there should be an end to law suits, but it is equally in the interest of the State that many of them should not be begun.

(1) *Delay.*

On the question of delay, a lawyer may perhaps take a prejudiced view, but I cannot admit that lawyers have done nothing to remedy this evil. The great increase in arbitration may be due to a desire to obtain a speedy decision, and, in the interests of shortness of the trial itself, to have persons who understand a particular trade and its customs as judges. It may be doubted whether the High Court is sufficiently manned for the cases which ought to and might reach it. A great deal has recently been done both to mitigate delay and to diminish cost by decentralising justice and increasing the jurisdiction of the county court. A glance at the first and last editions of the Yearly County Court Practice will show the amount of extra work which has been placed upon the shoulders of the county court judges, most of whom, together with the London stipendiaries, whose jurisdiction has also been increased, are probably the hardest worked public officials and men to whom the country has real cause to be grateful. The decentralisation of work has lately been applied to divorce, many undefended cases being now taken at assizes. The

number last year was over a thousand. As a result of this decentralisation, a number of local Bars have been formed, for example, at Birmingham there are forty-two counsel and 408 solicitors; at Liverpool, sixty-one counsel and 434 solicitors; at Manchester, seventy-seven counsel and 597 solicitors; and at Cardiff, twenty-one counsel and 168 solicitors. The number of judges now on the Bench who began their career as local counsel may show that to start in the provinces is not seldom the best way for a young barrister who seeks to succeed in the profession. There is an enormous difference between the Bar of to-day and the Bar of 150 years ago. In the Law List of 1927 there are, roughly speaking, just under 10,000 counsel, of whom 288 are King's Counsel. These figures do not include Indian gentlemen called to the Bar. Many gentlemen whose names are in the Law List do not practice at the Bar, but the numbers compare strangely with the Law List of 1780, in which there were thirty-two King's Counsel and Serjeants, and about 250 barristers. The same remarks apply to solicitors. The number of practising solicitors in 1928 was 15,197, of whom 10,000 are members of The Law Society. According to the Law List of 1780, there were in London about 1,200 attorneys; in Birmingham, thirty; in Liverpool, twenty-four; in Manchester, twenty; and in Cardiff, three.

(2) *Uncertainty.*

As to the uncertainty of the law, this will never be entirely eliminated. On questions of fact, men have and are entitled to have different opinions, and it is impossible to forecast always what those opinions may be. Juries do sometimes disagree, but a litigant before a single judge has this advantage, that the judge cannot disagree with himself. For the uncertainty attaching to a point of law as distinguished from a question of fact, Parliament, if I may be allowed to say so, and not the draftsman, is to some extent to blame. The modern practice of legislation by reference is asking for trouble in the Law Courts, and the complexity of some modern Acts of Parliament will always lead to diversity of judicial opinion. The best example of the latter will be found in income tax cases, and I need only refer to one of the most recent, the well-known professional cricketer's case, *Seymour* v. *Reed*, 1927, A.C. 554. There the judge gave a decision in favour of the cricketer. The Court of Appeal reversed it by two lords justices to one, and the House of Lords restored it by four to one. There has also been a chorus of complaint about the drafting of the Rent Restriction Acts. As to legislation by reference, the remarks of Sir John Simon, when the Unemployment Insurance Bill was recently before the House of Commons, will be remembered. There are many simple ways of overcoming the difficulty, and there seems to be no good reason why this practice of legislation by reference should continue. A little extra time and trouble in drafting, if the draftsman were given a free hand, would save much expense, much delay and much waste of judicial time. It is not fair to blame the draftsman for another cause of uncertainty. An amendment accepted by a Minister during the progress of a Bill, over which the unfortunate draftsman has no control, may cause unexpected difficulties in other parts of the Act. With regard to Rules and Orders made by a Minister in pursuance of an Act of Parliament, is it too much to ask that, busy as Parliament undoubtedly is over matters of great moment, such Regulations should come before a committee of both Houses for argument and approval. Sir Henry Slesser, an ex-Solicitor-General, is reported to have said recently (see Law Journal Newspaper, 19th November, 1927): "Very often the whim of a government clerk is expressed in a Statutory Order, which through legislation becomes the law of the land." Mr. Carr in his treatise on "Delegated Jurisdiction" (p. 2), points out that the total of Rules and Orders officially registered for 1920 was 2,473, and suggests as safeguards in Chap. IV: (1) The delegation of legislative power should be delegation to a trustworthy authority which commands national confidence; (2) the limits within which the delegated power is to be exercised should be definitely laid down; (3) if any particular interests are to be specially affected, the legislative authority should consult them before making laws; (4) publicity; (5) there should be machinery for amending or revoking delegated legislation as required. Professor Harold Laski shares these views in his standard work "A Grammar of Politics," at pp. 390 and 391, and his criticism is a just and valuable one. The price of hasty legislation is excessive litigation. Uncertainty in the law will probably be increased by the multiplication of *ad hoc* tribunals, for this system is not likely either to ensure uniformity of practice and interpretation, or to obtain the same authority as courts surrounded by judicial technique.

(3) *Costs.*

As to costs, it is probably true that the present high costs of litigation prevent many persons from proceeding before the courts. The Excess Profits Act greatly increased the amount of fees paid to lawyers, although that is gradually disappearing. Litigants too often insist on fashionable counsel or distinguished experts being retained and congratulate themselves on their good fortune in securing them until they lose the case and receive their bill. It is no bad thing that the fear of costs should deter vexatious litigation, but some reform is necessary in those cases which, in my view, still exist where a person is prevented by fear of costs from obtaining justice. I say, however, without fear of contradiction, that from the most highly placed solicitor in the City or Lincoln's Inn to the most humble one who practises in some small provincial town, the majority make peace in many more cases than they declare war. Very often it is the preliminary stages with their interlocutory costs which are so vexatious and unpopular. The Orders and Rules guiding the practice in the High Court are contained in the notorious White Book. There are in it 85 Orders, upwards of 1,200 Rules, not counting sub-Rules, and the number of cases cited reaches the extravagant total of upwards of 12,000. This is a matter which demands investigation and inquiry.

(4) *Complexity of Cases.*

With regard to the complexity of cases, the evils arising from this do not affect the ordinary litigant to any great degree. It is chiefly to be found in the Chancery Division in patent and mining cases, and in the King's Bench Division in building cases. How far it is possible in the former case to prevent expense by limiting the number of expert witnesses, as was done by a distinguished Chancery judge recently, and in the latter case by appointing an independent architect or surveyor to go into the matter and report, as is said to be done by one of the official referees, is a question on which I will content myself by saying that the suggestions are very attractive.

(5) *The Bureaucracy.*

Finally, as to the encroachment of the bureaucracy, instances have been given to show the extent to which it has already been carried. It may be that these encroachments have not been objected to by reason of one or other of the defects in our legal system above referred to. It may be also that the tendency will increase either because (1) the lawyers' house is not set in order, or (2) the number of cases of a so-called administrative character will increase, and modern opinion will tend in the direction of letting the Department deal with them instead of the Law Courts. Upon the assumption, however, that the tendency is likely to increase, what safeguards ought to be imposed for the protection of the ordinary citizen against departmental and bureaucratic aggression?

### Recent Reforms.

It must not be assumed that during the time that we have seen this encroachment of the bureaucracy there has been no

legal reform; but such reforms as have taken place have been on the criminal rather than on the civil side of the law. On the former side, during the present generation, there has been marked progress. In 1897 the Criminal Evidence Act afforded an opportunity to an accused person of giving his evidence on oath. In 1907 the Court of Criminal Appeal Act provided that a convicted person should have a right to appeal. In 1911 the law of perjury was codified, and in 1916 the law of larceny. Further, the criminal procedure was reformed by the Indictments Act of 1915 and the Criminal Jurisdiction Acts of 1914 and 1925. It is not possible to claim such an improvement on the civil side, although something was done to codify the companies law by the Companies (Consolidation) Act of 1908; the Bankruptcy law by the Bankruptcy Act of 1914; and the law of real property by the celebrated Acts passed by Lord Birkenhead in 1925. Together with these, there are several other Acts dealing with the procedure in county courts. I should also refer to the poor persons procedure on the civil side, for information with regard to which I am indebted to Mr. Hassard-Short, the secretary of the London Committee. The civil procedure in the High Court was brought into one code by the Rules of 1883. Very little advantage was taken of it as there was no one to whom the poor litigant had a right to go for advice. As a result new Rules were framed and came into operation in 1914, and were amended after some years of experience in 1921. Those Rules remained in force until 1926, when the whole working of the scheme was taken over by the solicitor branch of the profession. Under the new Rules, the work in connexion with applications by poor persons was decentralised; eighty-one committees of solicitors, appointed by The Law Society in London and the provincial Law Societies and approved by the Lord Chancellor, were set up. They inquire into the merits of cases and, if satisfied, grant an applicant a certificate enabling him to proceed as a poor person. Solicitors and counsel, often of the highest standing, are nominated from a voluntary rota to conduct the cases. Neither receive any remuneration for their services. The new scheme is working very well, and it is believed the problem of assisting poor litigants in the High Court and Court of Appeal has at last been solved. The number of applications dealt with and cases successfully conducted through the courts shows the very heavy burden both branches of the profession have undertaken voluntarily and gratuitously. Since the procedure came into operation in 1914, 46,000 applications by poor persons have been dealt with, and of these 21,000 have been granted. Upwards of 2,000 solicitors and 500 counsel have rendered assistance to poor litigants. There is no poor person procedure in the county courts, and if a poor person's case is remitted to that court, he loses the benefit of the procedure. It is thought that this is an anomaly which ought to be rectified. The Committee on Legal Aid for the Poor, on January 31st, reported in favour of remission of county court fees in such a case.

*(To be continued.)*

# Obituary.

## Mr. CHARLES ALDERSON.

Mr. Charles Alderson, solicitor, for fifty years clerk to the Morpeth magistrates, died at his home at Morpeth Castle on Saturday morning last. He had his left leg amputated on the previous Thursday. Mr. Alderson was admitted in 1892, and was the senior member of the firm of Messrs. Charles Alderson & Son, solicitors, of Blyth and Morpeth, and was a member of The Law Society.

## Mr. J. C. SMITH, F.S.A.

Mr. J. Challenor Smith, well known during the latter part of the nineteenth century to many frequenters of the literary department of the Probate Registry, Somerset House, died on Saturday last, the 10th inst., at the age of eighty-three. He had a remarkable knowledge of the records of which he had charge for so many years, which knowledge he generously placed at the disposal of others. Mr. Smith compiled the first section of the Calendar of Wills proved in the Prerogative Court of Canterbury, printed by the British Record Society and covering the period 1383-1558, thereby supplying the key to that storehouse which holds the greatest and most essential personal series of records of the English people. He was educated at Christ's Hospital, and was one of the few surviving links with the Prerogative Court of Canterbury in Doctors' Commons. Mr. Smith was elected a Fellow of the Society of Antiquaries in 1899.

## Mr. J. RATCLIFFE COUSINS.

Mr. John Ratcliffe Cousins, barrister-at-law, who was formerly Stipendiary magistrate for West Ham, subsequently Metropolitan Police Magistrate for Greenwich and Woolwich, and who was appointed to West London less than three years ago, died at his residence at Dulwich on Monday last, the 12th inst., at the age of sixty-four. In November last he was knocked down by a motor car near his home, when he sustained injuries to his head, which prevented his resuming his magisterial duties until January last. Having had a relapse, he entered a nursing home in the West End a few weeks ago and underwent two operations. The son of Mr. Edward Ratcliffe Cousins, F.R.C.S., he was educated at University College, London, and St. John's College, Cambridge, where he took honours in the Natural Science Tripos. He was called to the Bar in 1887 and joined the Western Circuit. In dismissing a charge of drunkenness against a man who pleaded successfully that he was lying on his own doorstep when he was arrested, he said: "The Englishman's home is not the impregnable castle it used to be. The Legislature has made several breaches in the walls in recent years, but there still remains to a man the inalienable right of being as drunk as he likes in his own domestic sanctuary."

## The Late Mr. A. C. STANLEY-STONE, C.C.

At the resumed inquest at St. Pancras on Friday last, on Mr. Arthur Carlyon Stanley-Stone, solicitor, the Chief Commoner of the City of London Corporation (whose death was announced in The Solicitors' Journal on the 4th ulto.), the jury expressed the opinion, after hearing the evidence of Sir Bernard Spilsbury, that the deceased had taken veronal to induce sleep, and returned a verdict of death from misadventure.

# Correspondence.

## The Land Registry.

Sir,—I think it would perhaps assist the profession if attention were drawn in your columns to the new arrangement at the Land Registry whereby official searches are made of the register *without fee* so that solicitors may be relieved of the necessity of sending clerks to the Registry for the purpose of inspecting the register. Particulars of this new practice are contained in the Practice Leaflet for Solicitors. (No. 3).

You might also like to draw attention to the fact that *all* business, including the lodging of applications for registration, can now be conducted with the Registry by post. The costs of solicitors in conducting registrations might be considerably reduced if instead of sending clerks to lodge papers, the papers were forwarded by post.

J. S. Stewart Wallace,
*Chief Land Registrar.*

H. M. Land Registry,
Lincoln's Inn Fields,
London, W.C.2,
14th March.

## Settled Land—Representation.

Sir,—A "Conveyancer's Diary" in your issue of to-day's date contains a delightfully interesting example of the confusion caused by *Re Gibbings* and *Re Bridgett and Hayes Contract*, but with due diffidence I venture to question your conclusions.

It seems to me that the purchasers from T X and T Y, who obtained a special grant, have an absolutely good title by virtue of ss. 37 and 22 of the Administration of Estates Act, 1925.

The former section surely gives title under any grant of administration, however wrongly made, provided the property conveyed to the purchaser by the persons taking the grant was within the terms of the grant.

Now, according to the particulars given, the grant to T X and T Y was a grant of probate as to the settled land under a specified settlement. It cannot be objected that the land was not settled land within s. 22 (1) of the Act, as the special definition of settled land in that section is land vested in the testator which was settled previously to his death, and not by his will. The fact that the land ceased to be settled land the moment after the testator died does not affect the question. It only affects the right of certain persons to obtain a grant. Having obtained the grant (rightly or wrongly) T X and T Y by their conveyances to purchasers conferred a good title, and no further assurance is required. I suggest there is no necessity for revocation unless the general executors, B and C, take steps to obtain it.

Norwich, ERNEST I. WATSON.
10th March.

[It was not asserted that the purchasers had a bad title. But there seem to us to be doubts about the position and the purchasers are entitled to have such doubts removed.—ED., *Sol. J.*]

## Representation in respect of Land which ceased to be Settled on Deceased's death.

Sir,—I have read "A Conveyancer's Diary" on the above subject in your issue of the 10th inst. with interest and advantage.

There is, however, another aspect which it may be well to bear in mind.

In *ReBridgett and Hayes* the learned judge is reported to have said: "Before anyone can go to the Court of Probate and get probate, specially limited to the settled land granted to him, he must be able to say that he is to be deemed to have been appointed special executor of the land, because at the death of the tenant for life he was the trustee of the settlement thereof. But he can only say that in relation to a settlement then existing, and in this case the settlement had come to an end on the death of the tenant for life."

Now, a person must be either alive or dead; there is no intermediate stage which can be described as "at the death." "At the death" must therefore be interpreted to mean either the last instant during life or the first instant when life is extinct.

It is clear from the passage of the judgment quoted above that the learned judge adopted the latter interpretation, as he says "the settlement *had* come to an end on the death." The decision was doubtless well founded on other grounds, and perhaps it was not anticipated that the passage quoted, which, after all, was only in the nature of a *dictum*, would lead to drastic alterations in the practice of the Probate Registry.

It is respectfully submitted that the expression "at his death" in the Administration of Estates Act, 1925, s. 22, sub-s. (1), may, with greater accuracy, be interpreted as meaning the last instant during life, that is to say, a time when the settlement was still subsisting, and such interpretation would lead to consequences more in conformity with the policy underlying the law relating to settled land and the expressed intentions of the settlor.

Picture, for example, the common case of a testator whose property consists principally of real estate, and who demises it to trustees upon trust to pay the income to his widow during her life, and after her death upon trust for sale and to divide the proceeds amongst his children, the widow's free property at her death consisting of personal chattels of little value.

It is not necessary to labour the argument that the trustees of the settlement are likely to be more suitable persons than the widow's executor to be granted representation in respect of the real estate.

It does not seem improbable that the point will be raised specifically in the Probate Division, and that the practice of granting representation in respect of settled land which ceased to be settled on the deceased's death to the trustees of the settlement may be restored. Perhaps a little hesitation in having such grants revoked is indicated.

Broadstairs, JOHN HANDON.
13th March.

[The general view expressed by Mr. Handon has been discussed in 71 SOL. J., pp. 891–2. But for convenience's sake, particularly in the case of small estates, the decision in *Re Bridgett & Hayes* seems to be acceptable to the profession.—ED., *Sol. J.*]

## Settled Land.

Sir,—Referring to the directions of the Senior Registrar contained in a letter printed on pp. 135 and 136 of Vol. 72 of your Journal, would it not be better if the directions were couched in a more direct form? Where it is said "the grant may be amended" does this mean "shall be amended"?

I hesitate to suggest that these directions were not called for by the decision in *Re Bridgett & Hayes*, but I am inclined to that opinion. In that case the court held that on the death of E. N. Thornley the settlement came to an end, and it is a reasonable inference then that the land included in that settlement ceased to be settled land, but it appears from the formulæ that we are to have another kind of settled land. This, I submit, is an attempt to legislate on the part of the registrars of the Principal Probate Registry, and as an aside I venture to say that what is required is some system of co-ordination between the Chancery and Probate Divisions of the High Court, or better still that the Chancery Division should have transferred to it all Probate matters.

Chesterfield, CHAS. PROCTOR.
13th March.

[It does not seem to us that any question of legislation on the part of the Registrars arises. The new directions seek to give effect to the law as interpreted by the above decision.—ED., *Sol. J.*]

## Auctioneers' Commission.

Sir,—I should like to express my appreciation of the article on Auctioneers' Commission which appeared in your issue of the 10th March. It ventilates a subject which is full of traps and difficulties, and now that owner-occupiers are a numerous and increasing class it is only to be expected that a great deal of trouble will arise in the future when houses come to be sold. One would fain hope that for the honour of their profession the Auctioneers' Institute would draw up model scales and rules so that an innocent vendor might know what treatment to expect if a sale is abortive through no fault of his own. In the case of *Knight, Frank & Rutley* v. *Gordon*, to which you refer, Mr. Justice Acton decided that the vendor is not liable for agent's commission if the sale is uncompleted through no default or omission on the part of the vendor, and to most people this seems a reasonable view of the matter. Your remarks on the case, however, seriously qualify this by suggesting that it may be a default on the vendor's part if he does not bring an action for specific performance. If this were so it seems to me that a great injustice could be done to

an innocent vendor. Although it is quite true that an auctioneer does not guarantee the solvency of a purchaser, yet surely the basis of the contract is that he should find an able and willing purchaser, exercising reasonable care in so doing. In one case an agent obtained a purchaser, who paid a deposit but refused to complete the purchase. An action was brought for the return of the deposit, but after a long delay and the incurring of costs by the vendor the case was withdrawn. In fixing the contract the agent had obtained the signature of a married woman, the wife of a poor man, and as it was a lease that was being sold, with its attendant responsibilities, it was obviously undesirable as well as useless to think of forcing the sale by bringing an action for specific performance. Surely it could not reasonably be maintained that in such a case the agent had done his part and earned his commission ?

If it were so, then the time has surely come when it is not only negligent not to employ a solicitor in drawing up the contract with the purchaser, but also highly desirable to employ one to arrange a proper contract with the estate agent. The prospect of agents being able to earn easy commissions by getting contracts signed by people of no means beyond the payment of the deposit, and confident in their behalf that they have done their part whether the purchaser intends to complete or not, is not very reassuring. The vendor's legal rights may be worthless, and in any case he can say that he certainly did not employ the agent to find a purchaser who was either unwilling to complete or else quite willing for a law suit to be commenced over the matter. Neither does the vendor contemplate, at any rate in the first instance, the necessity or desirability of paying the agent his fee twice over for selling the property only once.

I hope, sir, you will be able to see your way to treat us to some more articles on this subject of Auctioneers' Commission. It is a subject of perennial interest, and one that we can only expect to find adequately treated in your valuable journal.

London, W.C. EDWD. W. DAVIES.
12th March.

## Divorce—Poor Persons' Cases.

Sir,—With reference to the "Practice Note" on the difficulty of tracing co-respondents in poor persons' divorce cases appearing in the issue of the 25th February, I beg to cite two poor persons' cases within my experience in which the obstacle created by knowledge of the co-respondent's name but not of his identity or whereabouts has been successfully overcome. They are *Gleed* v. *Gleed*, a decision of the President (71 SOL. J. 729) upon a summons adjourned into court, and a case of *H.* v. *H. and T.* (1924), in which Mr. Justice Hill allowed an appeal from the registrar's order refusing leave to proceed without making the alleged adulterer a co-respondent, but further ordered that the petition should be amended by striking out the name of T, and alleging adultery with a man unknown. The facts were on all fours with those in *Gleed's Case*; but it is to be noted that the President, in the later case, said that to amend by striking out the name of the alleged adulterer and alleging adultery with a man unknown would not be the right procedure.

SUBSCRIBER.

## Income Tax.

Sir,—Referring to your Practice Note under this heading on p. 98 of your issue of the 11th ultimo, in which it is stated that rent receivable from a portion of business premises sub-let need not be included in the accounts of the business as a receipt for income tax purposes, all income arising being covered by the Schedule A assessment, may we ask you to be good enough to tell us the authority on which this statement is based ?

It is of interest to us, as the point recently arose between us and the local inspector.

Crewkerne, SPARKS & BLAKE.
5th March.

[Schedule A of the Income Tax Act, 1918, embraces all income arising from the letting of premises unfurnished. Cases 1 and 11 of Schedule D provide for the assessment of businesses and professions. It is under Schedule D that the assessment on the proprietor of the business is made and it is made in respect of the profits of the business. It will, therefore, be seen that this assessment cannot, in law, include the profits from sub-letting. The "description of profits" in the assessment will be, say, "Solicitor £5,000." It cannot be maintained that the profession of solicitor includes the letting of premises; quite apart from the fact that the inclusion would cause a double assessment with that under Schedule A on the unfurnished property, and s. 151 of the Income Tax Act, 1918, could be invoked. It must be remembered, however, that when the profits from sub-letting are eliminated from the accounts, that portion of rent, rates and other expenses applicable to the premises sub-let must be eliminated also. Any attempt to include profits from sub-letting should be resisted.—ED., *Sol. J.*]

## "Legal Liability for Damage by Floods and Tides."

Sir,—I observe from a review of the above which appeared in the "Municipal Journal," it is suggested that references ought to have been made to various disasters caused by the bursting of reservoirs, to sections in local Acts, and to "a Bill now being concocted in the Home Office to secure the safety of reservoirs." In the absence of these references the criticism is made that "the pamphlet might have been made more adequate." The obvious reply is that if I had set out to write a book on the law as to the safety of reservoirs, with some account of every occasion on which that law was called into question, and the variations made in local Acts to suit local conditions, his strictures would have required serious answer. No doubt if a reservoir bursts, a flood ensues. But, after the London high tide, I was primarily dealing on your instructions with natural floods, and a few lines (on p. 6 of the pamphlet) on the doctrine of *Rylands* v. *Fletcher* was all the exigencies of your always valuable space allowed me. Possibly a reference to the Waterworks Clauses Act, 1863, might have been made, to show that local authorities and water undertakers are bound in the same way as private individuals, but I had no room to pursue the doctrine further. The case which the reviewer mentions is contained neither in "Mews" nor the "Law Reports" Digest of 1927. He makes it abundantly clear that it has been worth his while to acquire knowledge of the law as to waterworks and its prospective changes; whether it is as clear that his criticism is a fair one I must leave to your readers.

YOUR CONTRIBUTOR.

## Point in Practice, No. 1158.

Sir,—Referring to your answer to Point in Practice No. 1158, which appeared in your issue of the 25th February, has s. 187 (1) of the Law of Property Act, 1925, been considered ?

If the particular easements described in the original question are not appurtenant to any dominant tenement, and such is not shown to be the case, is not the effect of s. 187 (1) of the Law of Property Act, 1925, to make the easements equitable ones ?

Assuming that in a 50-mile pipe line the easements are obtained in small portions, sometimes with a break of several miles, how does this affect your opinion ? A SUBSCRIBER.

[This correspondent is thanked for his criticism and referred to the answer to *Q.* 206, pp. 481-2, vol. 70, in which the questioner, also in a Yorkshire matter, raised the issue whether the easement of a sewer was appurtenant to land. The answer, which applies equally to a water main, meets that criticism. In each case the easement at any point subsists for the benefit of the lands drained or supplied, as the case may be, by the flow at that point, in accordance with the intention, and the section of the L.P.A. quoted.—ED., *Sol. J.*]

# POINTS IN PRACTICE.

**Questions from Registered Annual Subscribers are invited and will be answered by some of the most eminent authorities of the day. All questions should be addressed to—The Assistant Editor, "The Solicitors' Journal," 29, Breams Buildings, E.C.4, be typewritten on one side of paper only, and be in duplicate. Each copy to contain the name and address of the subscriber. To meet the convenience of Subscribers, in matters requiring urgent attention, answers will be forwarded by post if a stamped addressed envelope is enclosed.**

**Decontrol**—Who is Landlord?

*Q.* 1176. A is the owner of a dwelling-house held for the residue of a term of 50 years from Michaelmas, 1889, at an annual ground rent of £2 7s. The property was assigned to A on the 15th June, 1923. On the 31st July, 1923, A was the occupier of the whole of the house with the exception of two top rooms, which were let to a tenant. In February, 1925, A vacated the part occupied by him and let the whole house to a tenant on a weekly tenancy at £1 per week, landlord paying rates. A's new tenant took over the sub-tenant who was in possession of the two top rooms during A's occupation. Is the house decontrolled? If so does it fall within s. 2 of sub-s. (1) of the R.A., 1923, or does it fall within the meaning of sub-s. (7) of s. 12 of the R.A., 1920. References to decided cases will be much appreciated.

*A.* The house is not decontrolled. A is entitled to be regarded as the "landlord" at any rate by reason of s. 12 (7) of the Act of 1920: *Jenkinson* v. *Wright*, 1924, 2 K.B. 645. On the 31st July, 1923, the house was clearly not decontrolled, since A was not in possession of the whole. Inasmuch as the two top rooms have been continuously in occupation of a tenant to whom they were let *separately*, there has never been any date on which it can be said that the landlord has been in possession of the *whole* of the house, so that the house is by reason of s. 2 (1) of the 1923 Act not decontrolled.

**Decontrol**—Rent Less than Two-thirds of Rateable Value.

*Q.* 1177. We are sorry to bother you again, but you do not appear to have answered the last part of our question. We asked whether you were of opinion that if the house did not fall within s. 2 sub-s. (1) of the 1923 Act, whether it fell within the meaning of sub-s. (7) of s. 12 of the 1920 Act? You will notice that the rent payable by A to the freeholder is £2 7s., and that is less than two-thirds of the rateable value. The rateable value is £14 a year.

*A.* We did not overlook the effect of s. 12 (7), a consideration of that provision being only material as between the freeholder and A. The house, as we stated in our answer, is not decontrolled. While the tenancy as between the freeholder and A comes within s. 12 (7), the house as far as A, and the new tenant is concerned, is clearly not affected by that provision, so that A cannot claim possession on that ground.

**Infant Entitled to Land**—Procedure on Attaining Majority.

*Q.* 1178. I am much obliged by receipt of your letter of the 1st instant with answer to my query, which I return, and think that the learned gentleman who dealt with the point must have misread the statement of facts, as I clearly stated that the executors of the will had already conveyed the property to one of themselves, namely, the widow, before January, 1926, upon the trusts of the will, and I fail to see how the executors, in the face of that conveyance, can again convey the legal estate to the son. Possibly the widow, the sole trustee, can do so. If it had not been for this conveyance I should have, of course, agreed with the answer to the question, but, in the circumstances, I should be much obliged if you would let me have a re-considered opinion as I do not know whether the widow alone can convey to the son who has now attained twenty-one years.

*A.* The answer stands, after re-consideration: Immediately before 1st January, 1926, the widow held the property in trust for her infant son (assuming the son was then an infant). By virtue of provisions of L.P.A., 1925, 1st Sched., Pt. II, and S.L.A., 1925, 2nd Sched., para. 3 (1), the legal estate was on the 1st January, 1926, taken from the widow and vested in the trustees of the settlement who are the executors of A's will (see S.L.A., 1925, s. 30 (3)) as statutory owners. These should now convey to the son.

**Will**—Residuary Gift—Whether Absolute or for Life.

*Q.* 1179. E.C.H., by his will made in 1905, "gave, devised and bequeathed unto his wife A.H. all his household furniture, together with all moneys and benefits due from sources, debts, contracts of every description due therefrom, for her sole and personal benefit and control absolutely as well as all moneys, estate and effects of every kind, quality or description in anyway due, owing or belonging unto him at his decease," subject to the payment of his just debts and he appointed her sole executrix, and then proceeds "at my dear beloved wife's decease, A.H., the whole of my estate and effects, remaining moneys or otherwise property must be divided equally between my lawful children." The testator died in 1927 leaving both real and personal estate. Does the widow take a life estate only or does she take the whole estate absolutely?

*A.* These home-made wills cannot be construed with much confidence, but the opinion is here given that, so far as authority can apply, the widow's absolute estate is cut down to a life interest, see *Sherratt* v. *Bentley*, 1834, 2 M. & K. 149, and *Comistry* v. *Bowring-Hanbury*, 1905, A.C. 84.

**Will**—Gift to Class—Substitution Clause—Construction.

*Q.* 1180. By her will, made in 1913, a testatrix after making certain specific bequests, gave the residue of her estate unto her trustees, upon trust to sell and convert the same, and "to divide the residue of the said moneys unto and equally between and amongst all my brothers and sisters in equal shares, provided always that if any of my brothers or sisters shall die in my lifetime, leaving a child or children who shall survive me and attain the age of twenty-one years, then and in every such case, the last-mentioned child or children shall take (and, if more than one, equally between them) the share which his her or their parent would have taken under this my will if such parent had survived me." The testatrix died in 1927. A brother, M, of the testatrix, died in 1906 (before the will was made), leaving two sons and two daughters, and the two sons also pre-deceased the testatrix, and each son left children. Another brother, X, of the testatrix, died in 1923, leaving three children then and now living, and having had one son, who was killed in France in 1916, but left one son. It is assumed that the two sons of M and the deceased son of X and their respective issues or representatives will take no share in the residuary estate as they pre-deceased the testatrix, but I should be pleased to know (1) whether this is correct; and (2) whether the two daughters of the brother M will take any share under the will as their father died before the will was made, and I presume that if they do take any share they take the share which their father would have taken if he had survived the testatrix. There are no other brothers or sisters of testatrix, and no other issue of a deceased brother or sister who can be entitled, except the two daughters of M and the three children of X, unless the children or representatives of the deceased sons of M and the deceased son of X are entitled to share. I should be pleased to have any authority on the points in question.

*A.* Subject to the usual caution in construing a will without seeing it as a whole, the opinion is given that the clause recited above is strictly substitutionary, and therefore, the principle enunciated in *Christopherson* v. *Naylor*, 1816, I Mer. 320, prevails, to exclude the children of M from benefit. The gift of the children of X as a class is only to those surviving the testatrix, and there is no gift to the grandchild of X. The three surviving children of X will therefore take.

**Intestacy**—Spouse Creditor of Estate—Satisfaction of Debt and Share of Estate by Conveyance of Land—Procedure.

*Q.* 1181. A dies intestate leaving B (her husband) and two sons (both of age). The bulk of her estate is in real and leasehold properties. There are also some shares in limited companies. B is entitled to £1,000 of the estate. B is also a creditor to the extent of £800. The personal estate (including the leasehold property) is nothing like sufficient to meet these two sums and the other debts. It is not desired to sell the properties, but B is prepared to take some of them over in satisfaction of the £1,800 due to him. One of the two sons is also prepared to take another property over in satisfaction of his share of the residue.

(1) What documents will be necessary to vest the respective properties in B and the one son, and are there any precedents to meet this case?

(2) Will *ad valorem* stamp duties have to be paid on the values of the properties taken over by B and the son as their shares in the estate?

*A.* B takes a life interest in half the property, as well as the £1,000: see A.E.A., 1925, s. 46 (1) (i) (*b*). Administrators have a full power of appropriation, which applies on intestacy: see A.E.A., 1925, s. 41, and sub-s. (9). Under their general powers they may, by arrangement with B, sell him property to pay off his debt, and they may appropriate property in respect of the £1,000 under s. 41, also with his consent, and assent to its devolution to him under s. 36. The *ad valorem* stamp duties would be payable on the sale, but not on the appropriation or assent. Appropriation could, moreover, be made to the son in respect of his free share of the property, if it was also made in respect of the moiety to be subject to the husband's life interest with his consent: see s. 41 (1) (ii) (*b*). In answer to the questions—

(1) Assents reciting appropriations *quâ* beneficial interests and conveyances on sale *quâ* debts.

(2) As above.

**Representation**—Death of Executor Intestate and before Probate.

*Q.* 1182. It seems to us rather doubtful having regard to the recent case of *Re Bridgett and Hayes Contract*, 1927, 71 Sol. J. 910, whether the answer to *Q.* 1032 is correct. In the case mentioned Romer, J., held that the grant of probate was good and the purchaser was protected. In this query probate had been obtained a few days after the executrix's death and, relating back to the husband's death, it vested the legal estate in the widow. The widow having died intestate the legal estate vested in the President of the Probate Division until administration was taken out and the daughters having taken out letters of administration to the mother were, it seems to us, able to give a good title.

With regard to the objection taken that the widow had not made an assent to herself of the property, we contend that under the A.E.A., 1925, s. 1, the property vested in the widow on the grant of probate. Section 36 of the same Act seems to us only to apply where the beneficial interest is given to a person other than the personal representative—take, for instance, sub-s. (10) is a [personal representative] to haggle with. A [beneficiary] as to how death duties are to be paid—We think if the legislature had intended to include personal representatives who were also beneficiaries it would have said so, and that sub-s. (1) says a personal representative "may" assent, not "must."

*A.* The opinion here given is that the purchaser would not be protected under L.P.A., 1925, s. 204 (1), which does not protect purchasers generally, but simply protects them against invalidity "on the ground of want of jurisdiction or of want of any concurrence, consent, notice, or service." It cannot well be argued that the grant is in our case invalidated on the ground that the court had no jurisdiction. It is doubtful even if the executrix *had* assented, then died without proving, whether title could be made by her representative.

**Mortgage to two**—No joint Account Clause—Payment to Survivor—Title.

*Q.* 1183. On the 8th March, 1909, two persons took a transfer of a mortgage of £3,600. The money was not expressed to be advanced by them jointly or out of moneys belonging to to them on a joint account, either in the recital of the mortgage agreement for loan or in the testatum. In the mortgage deed the money is merely expressed to be paid by the mortgagees to the mortgagor without any mention as to whether the money belonged to the mortgagees in equal shares, or whether it was advanced out of moneys belonging to them on a joint account. One of the two mortgagees died in 1922, and in 1923 the surviving mortgagee transferred the mortgage debt and the securities therefor to three transferees. Had the surviving mortgagee power to transfer the mortgage debt alone or was the concurrence of the personal representatives of the deceased mortgagee necessary? If the latter, is the point covered by the L.P.A.? Please quote authorities.

*A.* If the mortgage was made to the mortgagees jointly, a joint account would have been implied under s. 61 of the Conv. Act, 1881, see also s. 60. On this supposition, the surviving mortgagee had power to transfer the mortgage debt alone. The corresponding provision in the L.P.A., 1925, is s. 111, see sub-s. (1) (*b*).

# NOTES OF CASES.

## High Court—King's Bench Division

**Withers, Bensons, Currie, Williams & Co.** *v.* **Cawston.**

MacKinnon, J. 8th and 9th March.

Solicitor—Claim from Husband for Wife's Costs in Negotiations Leading to Separation Deed—Measures Reasonably Necessary—No Additional Expense due to Wife's Conduct.

The plaintiffs in this action, a firm of solicitors, claimed £169 7s. 9d., the amount of a bill of costs incurred by them in conducting negotiations on behalf of the defendant's wife which culminated in a deed of separation. The defendant pleaded that none of the proceedings, measures, or things referred to in the bill of costs was reasonably instituted, taken or done by the plaintiffs in view of the knowledge possessed by his wife, and that none of them was a "necessary" for which his wife could pledge his credit. After consultation, counsel agreed that the material questions in the case were: (1) Was the wife acting honestly and reasonably? (2) Were the proceedings instituted by the plaintiffs reasonably necessary in her interests? and (3) was any unnecessary expense incurred owing to the wife's unreasonable conduct in the course of negotiations?

MacKinnon, J., dealing with the second question, said that in view of all the circumstances of the case he was of opinion that the solicitors had acted quite reasonably, and said that he was not satisfied that there ever came a time when they could have said "We can't do this reasonably." As to the third question, it was suggested that the amount of activity and the number of letters in the case were due to the wife changing her mind from time to time. He was not satisfied on the evidence that, on the whole, the wife had acted unreasonably. Judgment for the plaintiffs, with costs, the bill to be taxed as between solicitor and client.

COUNSEL: *Roland Oliver*, K.C., and *T. J. O'Connor*, for the plaintiffs; *F. O. Langley*, for the defendant.

SOLICITORS: *Withers, Bensons, Currie, Williams & Co.; Kennedy, Ponsonby, Ryde & Co.*

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

# Probate, Divorce and Admiralty Division.

**Sloggett** *v.* **Sloggett.** Lord Merrivale, P. 7th March.

DIVORCE—PETITION ADJOURNED FOR ARGUMENT BY KING'S PROCTOR—INTERVENTION BY KING'S PROCTOR BEFORE DECREE *nisi* WHERE NO COLLUSION—MATRIMONIAL CAUSES ACT, 1860, 23 & 24 Vict. c., 144, s. 7—JUDICATURE (CONSOLIDATION) ACT, 1925, s. 181, sub-ss. (2) and (3).

This was a summons for directions by the King's Proctor on the direction of the Attorney-General with the purpose of exercising an alleged statutory right of the King's Proctor to intervene in a divorce suit before decree *nisi*, when matters other than collusion are in question. The petition, which was undefended, had been adjourned for argument by the King's Proctor. The Attorney-General submitted that it was desirable that the court should make a definite pronouncement as to the powers and duties of the King's Proctor in such circumstances as the present case had disclosed. The wife's petition was filed on 8th December, 1926, alleging adultery by the husband in August and September, 1925, and disclosing her own adultery with a man at the Hotel Cecil on 25th October, 1925, and at the Hotel Russell, on 29th October, 1925. In that year the respondent said that he was offered £300 on behalf of the wife to furnish evidence for a divorce. For the wife it was stated that after the respondent's release from a term of imprisonment, he was offered a sum of money to go abroad. When the wife's solicitors found that the husband was arranging to commit adultery for her benefit, they declined to entertain such an arrangement. Then the wife committed adultery, and sent the husband information in order that he should divorce her. Investigation by the King's Proctor had resulted in evidence being forthcoming that would show a different state of facts. Not only did the wife commit adultery in a moment of despair, but, owing to some difficulty in identification, she committed another act of adultery that the evidence should be complete. The occasion at the Hotel Russell, however, was really on 24th November, 1925, and not on the date given in her petition. Either the King's Proctor had to argue on a false state of facts at present before the court or to bring the real facts before the court before decree *nisi*. As regarded the question of collusion in this case, he (the Attorney-General) would not be justified in asking the court to act on the evidence of the husband. Section 181 (2) of the Judicature (Consolidation) Act, 1925, said: "Any person may at any time during the progress of the proceedings or before the decree *nisi* is made absolute give information to his Majesty's Proctor of any matter material to the due decision of the case, and his Majesty's Proctor may thereupon take such steps as the Attorney-General considers necessary or expedient." The Attorney-General also referred to s. 181 (3), and citing, amongst other authorities, *Hudson* v. *Hudson and Poole*, 1 P.D. 65; *Jackson* v. *Jackson*, 1910, P. 230, and *Sottomayer* v. *de Barros*, 5 P.D. 94, submitted that, if during the progress of a case material facts were brought to the King's Proctor's knowledge, though not of collusion, the Attorney-General should take such steps as he thought expedient. The object must surely be to ensure that the court was satisfied that all the truth was before it.

Counsel for the petitioner said that the petitioner offered no opposition to the proceedings and cited *Lantour* v. *Her Majesty's Proctor*, 10 H.L. Cas. 685, which decision he said was opposed to the Attorney-General's submission. The "steps" mentioned in the statute meant "watch" and "inquiry."

Lord MERRIVALE, P., in the course of a considered judgment, said "... The matter arises on a reference to the King's Proctor made by the court at the hearing of an undefended suit wherein facts appeared which needed investigation. In view of doubts expressed in *Jackson* v. *Jackson*, and of the necessity for and importance of the regular conduct of proceedings in divorce suits, the Attorney-General presented the application for the King's Proctor for the hearing of facts adduced by him to be considered at the adjourned hearing and counsel to be present for that purpose. Counsel for the petitioner submitted that under the statutes the King's Proctor's intervention before decree *nisi* was limited to cases of suspected collusion. Shortly put, his argument is that the construction of the statutes must be on the basis of the maxim *expressio unius exclusio est alterius*. But it is necessary to take into account the subject matter and all the provisions which relate to it ..." (His Lordship referred to s. 178 of the Judicature (Consolidation) Act, 1925) "... Contrary to the ordinary course of trial of civil proceedings, the court is required to deal not only with issues raised by the parties, but with independent matters deemed by the Legislature fit to be dealt with in respect of the larger interest of the community ..."

In *Richards* v. *Richards and Cook*, 31 L.T. N.S. 598, action was taken such as is in question here, and Lord Birkenhead, when he came to the assistance of the court to clear off arrears, took similar action in *Gaskill* v. *Gaskill*, 1921, P. 425. Both cases warrant the view that the court is enabled to seek the aid of the King's Proctor in respect of questions of fact as well as that of the Law Officers of the Crown on questions of law at any stage of the case The two questions to be dealt with are whether the services of the King's Proctor are properly required by the Court in this case, and whether a direction that he should be represented at the hearing could properly be given. I can have no doubt that the direction given by the Attorney-General was a valid direction. The result is that particulars must be given to the petitioner of facts or matters deemed proper by the King's Proctor to be brought to the attention of the court, and that at the further hearing the King's Proctor shall be represented that such matters may be duly presented and considered.

COUNSEL FOR THE KING'S PROCTOR: Then your Lordship grants leave for the intervention of the King's Proctor?

LORD MERRIVALE, P.: Subject to the direction of the Attorney-General.

COUNSEL: *The Attorney-General* (Sir Douglas Hogg, K.C.) and *Clifford Mortimer*; *Wm. Stable and J. Buckley* for the petitioners.

SOLICITORS: *The King's Proctor*; *Westbury, Preston and Stavridi.*

[Reported by J. F. COMPTON-MILLER, Esq., Barrister-at-Law.]

# Societies.

## The Law Society.

TEACHING STAFF RECEPTION.

The annual reception by members of the Teaching Staff of The Law Society School of Law of past and present students, 1927-28, took place on Tuesday at the Society's Hall. The following were among those who accepted invitations, the majority of whom were present: Lord Justice Scrutton, the President of the Law Society (Mr. Cecil A. Coward), the Vice-President (Mr. R. M. Welsford), Mr. E. E. Bird, Mr. T. H. Bischoff, Dr. A. H. Coley, Mr. G. D. Colclough, Sir Robert Dibdin, Mr. H. M. Foster, The Rt. Hon. Sir Donald Maclean, Dr. Charles Mackintosh, Mr. R. W. Poole, Mr. G. S. Pott (members of the Council), and the Secretary (Mr. E. R. Cook), the Master of the City of London Solicitors' Company (Mr. Hugh D. P. Francis, M.C.) and the Clerk (Mr. A. T. Cummings), Master Chandler, Mr. H. du Parcq, K.C., Mr. A. M. Latter, K.C., Mr. R. A. Gordon, K.C., Mr. David Davies, Dr. W. G. Hart, Mr. G. H. J. Hurst, Mr. A. J. Vere Bass, Professor Edward Jenks, Mr. H. F. Jolowicz, Mr. S. H.

Leonard, Mr. G. D. Muggeridge, Dr. D. T. Oliver, Mr. Richard O'Sullivan, Mr. Harold Potter, Mr. S. E. Redfern, Mr. E. J. Stannard, Mr. G. C. Tyndale, and Mr. C. S. D. Wade. The following members of the Teaching Staff were present: Mr. E. C. S. Wade (principal), Dr. E. Leslie Burgin, Mr. R. S. T. Chorley, Mr. H. O. Danckwerts, Mr. L. R. Dicksee, Mr. M. R. Emanuel, Mr. R. R. Formoy, Mr. F. Gahan, Mr. P. A. Landon, Mr. R. Moelwyn-Hughes, Mr. R. Segar, Mr. C. S. Squires and Mr. L. B. Tillard.

The guests were received in the Library by Mr. Wade and an excellent concert followed in the Common Room. At the interval

Mr. WADE gave a cordial welcome to the guests and mentioned some particulars of the work of the school during the past year. Amongst other matters, he said, a school magazine had been established and also a rugby football club.

Lord Justice SCRUTTON delivered an amusing, anecdotal address, reminding those to whom he was speaking that they were the lawyers of the future, and that the judges and other dignitaries of the law had been at one time students just as they themselves were to-day, and that, like them, they had been troubled by the same doubts and actuated by the same hopes. His mind, he said, went back to the time when he was himself a student and when the pass examination for the barrister was not nearly so exhaustive as was the case at present, though, he believed, the solicitors' pass examination had always been the more severe. He recollected that on a grand night at Gray's Inn some twenty years since, at which he was present, there was also the late Lord Halsbury, nearly ninety years of age, but of full mental vigour, and a guest who was even more venerable, who told him how he had become admitted to the legal profession. The gentleman said that when he was admitted as a student he was met at the door by the butler, who took him into an empty hall, asked him one question and told him the answer, and then gave him a glass of beer because he must be tired with his examination. When he himself was admitted, a venerable gentleman sitting at a table asked him a question in equity and he gave the only truthful reply possible, which was that he did not know the answer. "Ah," said the examiner, "whom did you read with?" He said, "With A. L.," meaning A. L. Smith, who was afterwards Master of the Rolls. "Capital," was the comment, "you go on and I need not ask you any more." When, therefore, they read his judgments they would understand that they were not the result of intense study as a student. He got his training in chambers, and not in examinations, and a very good training it was, just as some of those he was addressing would get the best training that was possible for acquiring a knowledge of their profession by watching the work done in the firms with which they happened to be articled. A. L.'s method of training was an excellent one. He would give the student some papers to look up and the student would look up cases of the same character. Then A. L. would say, "Come in and tell me all about that case," and he would make him tell him all the facts in order to ascertain whether he had a clear grasp of the facts. He (the speaker) would impress upon the student that the first thing which was necessary was to get the facts right, and that if the facts were right and the cases had been looked through and the principles had been grasped, the student had received a very good training in the law. He would urge his hearers to bear in mind that the future of the profession depended upon them. It was impossible to say how many future presidents and members of the Council of The Law Society were among those to whom he was speaking. Of one thing each of them must be certain when he began to practise, that in dealing with a case he must make sure that he had his facts right and in order. When that was so a case very often solved itself. The trouble was that many people at the Bar and, he dared say, in the solicitor branch of the profession, did not trouble to get their facts in order. Lord Russell once said to a barrister, "Mr. So-and-so, will you give me your facts in some order. If you cannot manage it chronologically, alphabetically will do." He would like to give them another word of advice, namely, that they should always look at the originals of documents and never be content with seeing copies. He gave as an example a case which had recently been before the courts where a very important piece of evidence was disclosed only by looking at the original document, the copy having altogether failed to make it known. Another matter that was very important was that copies should be very carefully examined. There were constantly mistakes in copies produced in court for want of careful examination. He remembered a case where a consignment of rabbits appeared in the copy as so many bales of "rubbish." But the great thing he wished to impress upon them was that they should get as firm a hold of principles as was possible. The man who picked about a number of cases, and thought case A was a little like case B, and a little like case C, without trying to get at the principle behind his case, was doing enormous harm to the law, and no good to his own practice. Let them get as firm a hold of principles as they possibly could in the early part of their careers whilst they had the time for learning. When they attained to busy practices, as he hoped they would, they would not get so much time to keep up their law, especially when Acts like the Law of Property Act were sprung upon them. They should bear in mind the important fact that they were the people who would collaborate with the Bar and the judges in the future in doing justice. It was sometimes said that lawyers were parasites who produced nothing and ought to be swept off the face of the earth. But if the lawyers did their work properly the whole profession of the law would be doing justice between man and man, and it was that which made the profession of the law in England so esteemed by foreign countries. One had to talk to the lawyers of foreign countries to find out how much this was the case. The whole profession in England, providing it was working properly, did not regard a case as a matter where a man was trying to get the better of his opponent by fair means or foul, but the endeavour of the Bar, the solicitor branch, and the Bench, was to do justice between man and man. This was a noble aim, and it was an aim which every member of the profession, be he solicitor, barrister, or judge, should keep in view.

The President moved, and the Vice-President seconded, a vote of thanks to Lord Justice Scrutton for his address, and this was carried with acclamation.

The musical programme, which was of a high order, was supplied by Mr. T. M. Wechsler, Miss Olive Sturgess, Mr. Eric Whitcomb, Mr. Robert Silvester, Miss Rene Cook, Mr. O. M. Marshall, Mr. Ewwswydd and the Gresham Singers.

# Legal Notes and News.

## Honours and Appointments.

Mr. SAMUEL RONALD COURTHOPE BOSANQUET, K.C. (Recorder of Ludlow), has been appointed Recorder of Walsall, to succeed Mr. J. Lort-Williams, K.C. Mr. Bosanquet was called to the Bar in 1893 and took silk in 1924.

Mr. WILLIAM ALLEN, Barrister-at-law, has been appointed Recorder of Ludlow, in succession to Mr. S. R. C. Bosanquet, K.C. Mr. Allen was called to the Bar in 1905.

Mr. ST. JOHN HUTCHINSON, Barrister-at-law, has been appointed Recorder of Hythe, in succession to Mr. F. T. Barrington-Ward, who has been appointed Recorder of Chichester. Mr. Hutchinson was called to the Bar in 1909.

Mr. PHILIP B. FRERE, Solicitor of the firm of Messrs. Frere, Cholmeley & Co., of 28 Lincoln's Inn-fields, W.C.2, has been appointed Clerk and Solicitor to the Society of Apothecaries, in succession to the late Mr. A. B. Watson. Mr. Frere was admitted in 1921.

Mr. I. A. KEYTER, Town Clerk of Graaf Reinet, has been appointed Town Clerk of Paarl, Cape Province.

Mr. D. R. WHITE, Solicitor, Registrar of Birkenhead County Court has been appointed Registrar of Wigan, St. Helens and Widnes, in succession to Dr. Henry Brierley, who has retired.

### SIR V. BOWATER'S CRITICISM OF THE LAW.

At the Mansion House Justice Room, before Alderman Sir Vansittart Bowater, M.P., Romualdo Mansi, of Railway-place, Fenchurch-street, was summoned by the Corporation for failing to close his shop for the serving of customers at 8 p.m. Sir Vansittart Bowater said that it seemed a stupid arrangement. A man might legitimately keep his shop open until 10.30 on Sundays and yet because his assistant inadvertently sold some sweets to a mother for her child after 8 p.m., he was considered to have broken the law. It was very ridiculous, and was hard on the man who might sell buns, cakes, and every other class of refreshment, but if he sold sweets he got into trouble. Still, he (Sir Vansittart Bowater) had to administer the law, and must fine him 20s.

### DISTINGUISHED INVALIDS.

The Lord Chancellor (VISCOUNT CAVE) is stated to be making satisfactory progress.

Mr. ALEXANDER MACMORRAN, M.A., K.C. (Recorder of Hastings), who has been laid up for some time, is now stated to be progressing slowly.

### POLICE AS "ARBITERS OF MORALS."

A strong protest against the "offensive label" "common prostitute" was made by Mrs. More Nesbit, of Edinburgh, formerly a policewoman, when giving evidence on Saturday last, on behalf of the Scottish Federation of Societies for Equal Citizenship, before the Street Offences Committee, sitting at Burlington House. "Middle-aged woman as I am," she said, "I myself have been spoken to by men, and on one occasion in Bond-street a man who had spoken to other women, also spoke to me. I went to a constable and said to him, 'You had better keep your eye on that man as he is accosting women.' The policeman said, 'All right, ma'am. You mind your business and I will mind mine.'"

The Chairman: Did you tell him you yourself had been accosted?—No, I did not tell him that.

When a woman or girl was convicted of soliciting or importuning, she said, it prevented them from being able to reform except under most extraordinary circumstances. She gave instances of cases in which quite young girls when so convicted had taken the view, "When you are down they keep you down." No one would give a girl so convicted employment, and there was but one thing left for them. She contended that there was different treatment for men who committed offences of annoyance in the street. They were never charged with importuning. She thought the law should be altered so that men and women should be treated equally for such offences. No one should be convicted on police evidence alone, although she had never known cases where men and women, who were alleged to have been annoyed by solicitation, had been prepared to come forward and give evidence.

Mr. H. P. Macmillan, K.C. (Chairman), suggested that in that case there was the probability that there would never be any convictions at all for this offence.

Mrs. Nesbit said she did not think there should be unless people came forward and gave evidence that they had been annoyed, and she did not think it would make any difference. She knew of one girl who had been convicted ninety times. It was bound to recur with her, and others like her. "You will never do away with prostitution," she added, "as long as there are men."

Miss Christal Macmillan, on behalf of the Edinburgh Society for Equal Citizenship, supported the view that solicitation alone should not be an offence, and also that annoyance should be proved by the person annoyed. She objected to the charge of "soliciting or importuning for immoral purposes," because that constituted the police arbiters of morals. Solicitation should be allowed to go on without interference unless someone was sufficiently annoyed as to be prepared to go to the court and give evidence to that effect.

Further evidence was taken *in camera* before the Committee adjourned.

### THE PROPERTY MART.

An interesting house in the Hampstead area will be offered for sale by Messrs. Hampton & Sons on Tuesday, the 27th inst., as announced in this issue, viz.: No. 4 Templewood-avenue, N.W.3. It is an imposing Georgian style residence with period decorations and large garage, standing in pleasure grounds which includes a tennis lawn and a carriage drive approach.

## Court Papers.

### Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON

| Date. | Emergency Rota. | Appeal Court No. 1. | Mr. Justice Eve. | Mr. Justice Russell. |
|---|---|---|---|---|
| Monday, Mar. 19 | Mr. Synge | Mr. Bloxam | Mr. Bloxam | Mr. Hicks Beach |
| Tuesday ... 20 | More | Jolly | *More | Bloxam |
| Wednesday .. 21 | Ritchie | Hicks Beach | Hicks Beach | More |
| Thursday .. 22 | Bloxam | Synge | *Bloxam | Hicks Beach |
| Friday ..... 23 | Jolly | More | More | Bloxam |
| Saturday ... 24 | Hicks Beach | Ritchie | Hicks Beach | More |

| Date. | Mr. Justice Romer. | Mr. Justice Astbury. | Mr. Justice Tomlin. | Mr. Justice Clauson. |
|---|---|---|---|---|
| Monday, Mar. 19 | Mr. More | *Mr. Synge | Mr. Jolly | Mr. Ritchie |
| Tuesday ... 20 | *Hicks Beach | Jolly | *Ritchie | Synge |
| Wednesday .. 21 | *Bloxam | *Ritchie | *Synge | Jolly |
| Thursday .. 22 | *More | Synge | *Jolly | Ritchie |
| Friday ..... 23 | *Hicks Beach | *Jolly | Ritchie | Synge |
| Saturday ... 24 | Bloxam | Ritchie | Synge | Jolly |

* The Registrar will be in Chambers on these days, and also on the days when the Courts are not sitting.



## Stock Exchange Prices of certain Trustee Securities.

Bank Rate 4½%. Next London Stock Exchange Settlement Thursday, 22nd March, 1928.

| | Middle Price 14th Mar. | Interest Yield. | Yield with Redemption. |
|---|---|---|---|
| **English Government Securities.** | | £ s. d. | £ s. d. |
| Consols 4% 1957 or after | 86 | 4 13 0 | — |
| Consols 2½% | 55¼ | 4 14 0 | — |
| War Loan 5% 1929-47 | 102¼ | 4 18 0 | 4 18 9 |
| War Loan 4½% 1925-45 | 97¼ | 4 12 6 | 4 16 6 |
| War Loan 4% (Tax free) 1929-42 | 101¾ | 3 19 0 | 3 19 6 |
| Funding 4% Loan 1960-1990 | 89¾ | 4 9 6 | 4 14 0 |
| Victory 4% Bonds (available for Estate Duty at par) Average life 35 years | 93¾ | 4 6 0 | 4 7 0 |
| Conversion 4½% Loan 1940-44 | 97¾ | 4 12 0 | 4 16 0 |
| Conversion 3½% Loan 1961 | 76¾ | 4 11 6 | — |
| Local Loans 3% Stock 1921 or after | 64¼ | 4 13 0 | — |
| Bank Stock | 258 | 4 11 0 | — |
| India 4½% 1950-55 | 94 | 4 15 6 | 5 0 0 |
| India 3½% | 70½ | 4 19 0 | — |
| India 3% | 60½ | 4 19 0 | — |
| Sudan 4½% 1939-73 | 94½ | 4 15 0 | 4 17 0 |
| Sudan 4% 1974 | 84 | 4 15 0 | 4 17 0 |
| Transvaal Government 3% 1923-53 (Guaranteed by British Government, Estimated life 19 years) | 85 | 3 13 0 | 4 6 0 |
| **Colonial Securities.** | | | |
| Canada 3% 1938 | 86 | 3 12 0 | 4 18 0 |
| Cape of Good Hope 4% 1916-36 | 95 | 4 4 6 | 5 0 6 |
| Cape of Good Hope 3½% 1929-49 | 82 | 4 6 0 | 5 0 0 |
| Commonwealth of Australia 5% 1945-75 | 99 | 5 1 0 | 5 2 6 |
| Gold Coast 4½% 1956 | 94 | 4 15 6 | 4 17 6 |
| Jamaica 4½% 1941-71 | 95 | 4 14 6 | 4 18 6 |
| Natal 4% 1937 | 93 | 4 5 0 | 5 0 0 |
| New South Wales 4½% 1935-45 | 91 | 4 19 0 | 5 7 0 |
| New South Wales 5% 1945-65 | 99 | 5 1 0 | 5 3 0 |
| New Zealand 4½% 1945 | 96 | 4 13 0 | 4 17 6 |
| New Zealand 5% 1946 | 103 | 4 17 0 | 4 16 6 |
| Queensland 5% 1940-60 | 97 | 5 3 0 | 5 3 0 |
| South Africa 5% 1945-75 | 103 | 4 17 6 | 5 0 0 |
| South Australia 5% 1945-75 | 98½ | 5 1 6 | 5 0 0 |
| Tasmania 5% 1945-75 | 101 | 4 19 0 | 5 0 0 |
| Victoria 5% 1945-75 | 99 | 5 1 0 | 5 0 0 |
| West Australia 5% 1945-75 | 99 | 5 1 0 | 5 2 0 |
| **Corporation Stocks.** | | | |
| Birmingham 3% on or after 1947 or at option of Corporation | 63 | 4 15 6 | — |
| Birmingham 5% 1946-56 | 102 | 4 18 0 | 4 17 0 |
| Cardiff 5% 1945-65 | 101½ | 4 19 0 | 4 18 0 |
| Croydon 3% 1940-60 | 70 | 4 5 6 | 5 0 0 |
| Hull 3½% 1925-55 | 77¾ | 4 9 6 | 5 0 0 |
| Liverpool 3% Redeemable at option of Corporation | 73 | 4 16 0 | 5 0 0 |
| Ldn. Cty. 2½% Con. Stk. after 1920 at option of Corpn. | 54½ | 4 13 6 | — |
| Ldn. Cty. 3% Con. Stk. after 1920 at option of Corpn. | 64½ | 4 13 6 | — |
| Manchester 3% on or after 1941 | 63 | 4 14 6 | — |
| Metropolitan Water Board 3% 'A' 1963-2003 | 64 | 4 13 0 | 4 17 0 |
| Metropolitan Water Board 3% 'B' 1934-2003 | 65½ | 4 12 6 | 4 15 6 |
| Middlesex C. C. 3½% 1927-47 | 83 | 4 5 6 | 4 17 0 |
| Newcastle 3½% Irredeemable | 72 | 4 17 0 | — |
| Nottingham 3% Irredeemable | 63 | 4 15 6 | — |
| Stockton 5% 1946-66 | 102 | 4 18 0 | 4 19 0 |
| Wolverhampton 5% 1946-56 | 102 | 4 19 0 | 5 0 0 |
| **English Railway Prior Charges.** | | | |
| Gt. Western Rly. 4% Debenture | 81½ | 4 18 6 | — |
| Gt. Western Rly. 5% Rent Charge | 100 | 5 0 0 | — |
| Gt. Western Rly. 5% Preference | 97xd | 5 3 0 | — |
| L. & N. E. Rly. 4% Debenture | 78½ | 5 2 0 | — |
| L. & N. E. Rly. 4% Guaranteed | 75 | 5 6 6 | — |
| L. & N. E. Rly 4% 1st Preference | 69xd | 5 16 0 | — |
| L. Mid. & Scot. Rly. 4% Debenture | 81 | 4 19 0 | — |
| L. Mid. & Scot. Rly. 4% Guaranteed | 78xd | 5 2 0 | — |
| L. Mid. & Scot. Rly. 4% Preference | 74xd | 5 8 0 | — |
| Southern Railway 4% Debenture | 80 | 5 0 0 | — |
| Southern Railway 5% Guaranteed | 98 | 5 2 0 | — |
| Southern Railway 5% Preference | 93 | 5 7 6 | — |